IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, PETITIONER,

v.

STANDARD OIL COMPANY OF NEW JERSEY ET AL., DEFENDANTS

DEFENDANTS' TESTIMONY

On behalf of the defendants:

Mr. JOHN G. MILBURN, Mr. MORITZ ROSENTHAL
Mr. JOHN S. MILLER, Mr. M. F. ELLIOTT, Mr. MARTIN CAREY, Mr. F. L. CRAWFORD, Mr. DOUGLAS CAMPBELL, Mr. C. W. MARTYN.

On behalf of the petitioner:

Mr. FRANK B. KELLOGG, Mr. C. B. MORRISON
Mr. J. HARWOOD GRAVES

VOLUME 15

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

10579 FRED ZIMMERMAN, called as a witness, on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. State your name, age, residence, and occupation.—A. Fred Zimmerman; assistant general freight agent of the Michigan Central Railroad at Chicago; residence, Oak Park, Illinois.

Q. How long have you been connected with the Michigan Central Railroad?—A. Since 1890.

Q. Does that cover the whole period of your railroad work?—A. No, sir.

Q. Before you were the Michigan Central, with what railway were you connected?—A. With the Monon road—the C. I. & L.

Q. It was then the Louisville, New Albany & Chicago Railway, was it?—A. Louisville, New Albany & Chicago Railway at the time.

Q. How long were you connected with the Monon?—A. About three years.

Q. Were you with any railroad before that?—A. I was with the Chicago & Ohio River Traffic Association prior to that.

Q. What is that association? The same association that has been referred to here, that had to do with rate making from points north of the Ohio River to points on the Ohio River?—A. It has to do with the affairs of the railroads operating between Chicago, Indianapolis, and the Ohio River gateways.

Q. How long were you with that association?—A. For
10580 four or five years—about five years.

Q. And before that what position?—A. I started with them.

Q. Now, during the whole time you have been connected with these railroads you had to do with the rate department, had you?—A. The traffic department; yes, sir.

Q. What positions have you held besides that of assistant general freight agent—is it assistant general freight agent of the Michigan Central?—A. Yes.

Q. What other positions have you held?—A. Chief clerk in the general freight department, traffic clerk, rate clerk, percentage clerk, and office boy. I started in as office boy.

Q. What do you mean by percentage clerk?—A. Arranging and compilation and issuance of percentage divisions for the division of through rates between railroads.

Q. Between the carriers carrying the freight?—A. Yes.

Q. How long have you been connected with the Michigan Central in Chicago?—A. Since July 1, 1900.

Q. Have you been assistant general freight agent all of that time?—A. Yes, sir. I might say that I was with the Michigan Central in Chicago from 1890 to 1895, and then with them from 1895 to 1900 in Detroit and Buffalo.

Q. Then, all your business life has been spent in the matter of railroad rates and rate making and divisions or percentages, has it?—A. Yes, sir.

Q. Do you know—and if you know you may state—what was the general practice among railroads in the transportation of property over their line which lay within a State where the freight was started from an initial point in one State and was destined
10581 to an initial point in another State, as to the using of State rates under unfiled tariffs as a portion of the combination of rates for the transportation in those cases?

Mr. KELLOGG. That is objected to as incompetent.

Q. Prior, say, to October 1, 1905?—A. It was the custom to use a combination of locals if such combination made a lesser rate than the published through rate.

Q. Or if there were no published through rates?—A. Or if there were no published through rates, such combination was used.

Q. That is, you used the lowest rates to give the lowest results to the shipper?—A. Yes, sir.

Q. Or if there was not any published through rate, then you used this combination?—A. Yes, sir.

Q. And was that true, although the tariff naming the rate from one point in the State to another point in the State was not filed with the Commission?—A. The question of the filing of the tariff was really never thought of by the rate clerks. They considered it their duty at that time to give the shipper the benefit of the lowest rate that was obtainable by the use of locals to and from junction points.

Mr. KELLOGG. Same objection.

Q. Whether the tariffs were filed or unfiled?—A. As I say, they never thought of it in that connection; no thought was given to it.

Q. Do you know what the practice was commonly with respect to the railroads during that time, say prior to October 1, 1905, of filing or not filing with the Interstate Commerce Commission
10582 tariffs naming rates from one point in a State to another point in the same State?

Mr. KELLOGG. Same objection.

A. I believe——

Mr. KELLOGG. If you know the practice, not what you believe.

WITNESS. Well, the practice was not to file those rates.

Q. Mr. Zimmerman, I show you copy of Tariff 24, bearing I. C. C. No. 3, of the Chicago and St. Louis Traffic Association, purporting to be effective May 15, 1899, which is produced here by the counsel for the Government; also a copy of a publication of the Illinois Railroad and Warehouse Commissioners of January 1, 1900, containing a classification of commodities; also a copy of petitioner's Exhibit 549, being a tariff of the Chicago & Alton Railway Company, bearing I. C. C. No. 981, effective August 13, 1901; also petitioner's Exhibit 550 and petitioner's Exhibit 551, the same being succeeding application sheet tariffs of the Chicago & Alton Railway Company; also Chicago & Alton Railway Tariff I. C. C. 1407; also petitioner's Ex-

hibits 552 and 553. Have you looked over those documents?—A. Yes, sir.

Q. Having examined those documents, will you please say whether from those documents you, as a rate clerk, could have quoted a rate for the transportation of petroleum and its products, in carload lots, during the years 1903 and 1904, from Whiting, as a shipping point, over the Chicago Terminal Transfer Railroad, to Chappell, Illinois, and thence from Chappell, Illinois, over the Chicago & Alton Railway to East St. Louis, Illinois; and, if you say you could have ascertained and quoted a rate from those tariffs or any of them,
10583 please state what rate you would have quoted to the shipper applying as the lawful rate.

Mr. KELLOGG. That is objected to as incompetent. The tariffs are the best evidence as to what they contain. And also objected to as asking his opinion upon a legal question, as to what is a lawful rate.

A. Knowing the intention was and is, on the part of the western roads generally, to apply Chicago rates from Whiting, Indiana, and points in the Chicago district generally, I would first refer to the Chicago & Alton Tariff I. C. C. No. 981, which is dated August 13, 1901, and which applies up to June 9, 1903, to establish the fact that Chicago rates applied from Whiting from January 1, 1903, up to June 9, 1903; I would then seek out the lowest rate from Chicago to East St. Louis, which I find is shown in petitioner's Exhibit 552 as 6 cents per 100 pounds, and that, in accordance with the general intent to apply Chicago rates from Whiting, would be the rate January 1, 1903, to June 9, 1903. I would follow the same process with respect to Chicago & Alton Railway Company I. C. C. No. 1203, which is dated to take effect June 9, 1903.

Q. That cancels I. C. C. No. 981?—A. Yes, 981; and up to December 31, 1903, would produce the same rate of 6 cents. Then I note that Chicago & Alton Railway Company's Special G. F. D. No. A447 again names a rate of 6 cents per 100 pounds, taking effect January 1, 1904, and that used in connection with C. & A. I. C. C. No. 1203 would produce the rate of 6 cents per 100 pounds. That rate is reiterated by the use of Chicago & Alton I. C. C. No. 1407,
10584 taking effect July 18, 1904, and superseding I. C. C. No. 1203. I. C. C. 1407 being used in connection with this C. & A. G. F. D. No. A447 makes the 6-cent rate.

Q. Continues the application of the Chicago 6-cent rate to Whiting?—A. Yes, sir.

Q. Now you may assume, Mr. Zimmerman, in your testimony which you have just given that those tariff sheets or rate sheets, petitioner's Exhibits 552 and 553, naming the 6-cent rate Chicago to East St. Louis, were never filed in fact with the Interstate Commerce Commission. Would your answer be the same as that which you have just given?

Mr. KELLOGG. Same objection.

A. In the years you name that fact would not be taken in question, because the clear intent of the Chicago & Alton, and all other western

roads, was to apply Chicago rates from Whiting and that district to points where the rates were higher than a certain minimum, which minimum, I note from their I. C. C. No. 981, was 6 cents on carload commodities.

Q. I again call your attention to the same Chicago and St. Louis Traffic Association Tariff No. 4, and the document referred to as the Illinois Railroad and Warehouse Commissioners' Classification, and then call your attention to petitioner's Exhibit 570, being tariff of the Chicago, Burlington & Quincy Railroad I. C. C. No. 4721, an application sheet tariff of that company, and to petitioner's Exhibit 571, the same being amendment 3½ to C. B. & Q. Tariff I. C. C. 4721; I also call your attention to a copy of C. B. & Q. Tariff I. C. C. No. 4234, and supplement 2 to that tariff; I also call your attention to

10585 copy of C. B. & Q. tariff marked G. F. O. No. 1059, purporting to be effective by its terms January 1, 1904. In that connection I direct your attention to the fact that this G. F. O. No. 1059 is listed with other tariffs on supplement No. 2 to Tariff 4234 to which I refer. I also call your attention in the same connection to tariff of the same company G. F. O. 1247, effective January 10, 1896, and ask you to assume that this tariff was filed with the Interstate Commerce Commission April 4, 1904, as No. 17209. All of these documents are now presented to you. With them before you, will you please state whether, if asked by a shipper or other person, you could from these documents, or any of them, have quoted a rate on petroleum oil and its products, in carload lots, from Whiting to East St. Louis over the Chicago Terminal Transfer Railroad from Whiting to connection of C. B. &. Q. in or near Chicago, and thence over the C. B. & Q. to East St. Louis; and if so, what your lawful rate would have been.

Mr. KELLOGG. That is objected to as incompetent and calling for the conclusion of the witness. The tariffs are the best evidence.

Q. This I ask you to do according to the course of practice of the railroads in Chicago at that time in quoting rates as lawful rates to shippers applying therefor.

Mr. KELLOGG. This is objected to as incompetent. The tariffs are the best evidence as to what rates they quote. Also objected to on the ground that it calls for the conclusion of the witness on the legal question, and for the practice of the Chicago railroads, which was question, and for the practice of the Chicago railroads, which has not been shown in this case.

A. During what period?

10586 Q. The time is the year 1904.

Mr. KELLOGG. May it be understood that all the testimony on this point is taken subject to the same objection?

Mr. MILLER. Yes.

A. The C., B. & Q. G. F. O. No. 14726, which is their I. C. C. No. 4721, states that between suburban points as named and all stations on the C., B. & Q., Aurora, Illinois, and north, west, and south thereof, current tariff rates in effect—this is blurred, but I suppose it is from

and to Chicago—via C., B. & Q. and connections, subject to following rates as minimum; and the minimum on commodities taking less than class rates is 6 cents on carloads. I find on page 4 of C., B. & Q. I. C. C. 4721 the station Whiting, on the C. T. T., given as one of the suburban points from which Chicago rates will apply. Petitioner's Exhibit 573, which is C., B. & Q. G. F. O. No. 1059, names a rate of 6 cents per hundred pounds from Chicago to East St. Louis on oil, coal, carbon, etc., in carloads. I would, under those two issues, apply the 6-cent rate from Whiting at that time.

Q. I show you a copy of Pennsylvania Railroad Company's Tariff I. C. C. S. No. 459, effective April 10, 1904, and ask you whether you can as a rate tariff expert, or could from that tariff alone, without the use of any percentage sheet or other paper, find or quote a rate from Olean, New York, to Norwood, New York?

Mr. KELLOGG. That is objected to. The tariff is the best evidence. Calling for the conclusion of the witness.

Q. For your convenience we show you the map, showing Olean to be on the Pennsylvania Railroad, having a branch running
10587 from Olean to Buffalo and a branch running from Olean to Rochester, and Norwood is on the Rome, Watertown & Ogdensburg division of the New York Central Railroad.—A. It would be impossible for anyone to say what the route was to be used under that tariff from Olean to stations on the R., W. & O. division of the New York Central without referring to the percentages.

Q. What is there on the tariff that indicates that a reference to the percentages or percentage sheet is necessary?—A. Under the caption "Stations on Rome, Watertown & Ogdensburg division of the New York Central & Hudson River Railroad," is the statement, "Route in accordance with agreed percentages."

Q. Then, no route could apply except where the percentages had been agreed upon for traffic over that route between these two railroad companies; is that right?—A. That is right.

Q. The Pennsylvania and the New York Central.

Mr. KELLOGG. Same objection to all this line of testimony.

Q. I show you defendants' Exhibit 114A and 114B, the same being such percentage sheets, one being between the Western New York & Pennsylvania Railroad (the name of the Pennsylvania line running from Olean to Buffalo) and the Rome, Watertown & Ogdensburg Railroad, and the other between the Pennsylvania Railroad and the Rome, Watertown & Ogdensburg division of the New York Central Railroad. Now, examine those documents and state by what route or routes the tariff shown you, I. C. C. S. 459, together with this percentage sheet, names a rate between Olean and Norwood.—A. Exhibit 114A, being W. N. Y. & P. Railroad, Percentage Sheet No. 221, shows that Olean is in W. N. Y. & P. Railroad Group E.

10588 Mr. KELLOGG. I do not think it is necessary to go all over that. He can say that it applies. There is no dispute about it applying, Mr. Miller.

Mr. MILLER. What do you mean by that?

Mr. KELLOGG. Why, that that percentage sheet provides for the route through——

Mr. MILLER. Through Buffalo?

Mr. KELLOGG. Through East Buffalo.

Mr. MILLER. And not by way of Rochester?

Mr. KELLOGG. Certainly. There has been no dispute about the meaning of the percentage sheet.

Mr. MILLER. Very well. But you still contend that the tariff——

Mr. KELLOGG. Why, certainly; we contend that the tariff is a tariff by any route.

Mr. MILLER. By way of Rochester?

Mr. KELLOGG. Certainly.

Mr. DURAND. That is the way it reads.

Q. Assuming that those percentage sheets do not name a route from Olean to Rochester, and thence over the Rome, Watertown & Ogdensburg Railroad to Norwood, you may state whether that tariff names a rate or fixes a rate for transportation from Olean through Rochester, by way of Rochester, to Norwood.

Mr. KELLOGG. That is objected to as a question of construction of the tariffs. The tariffs are the best evidence of that.

A. From the documents displayed it is evident the route is via Buffalo.

Q. And not by way of Olean and Rochester?—A. Not by
10589 way of Rochester.

Q. I show you petitioner's Exhibit 608, Pensylvania Railroad Company Tariff G. F. D. 114, dated October 8, 1893; also petitioner's Exhibit 612, the same being New York Central & Hudson River Railroad Company's so-called rate order No. W. K. 201, dated January 1, 1904; also a copy of Central Vermont Railroad Company's Interstate Freight Tariff No. Y5, effective January 11, 1903, and asking you to assume that all of these tariffs or their prior or subsequent issues, naming the same rates, were in effect in the year 1904 and then uncancelled, could you from these tariffs during that year have named a rate to a shipper as the lawful rate for the transportation from Olean, New York, over the Pennsylvania line to Rochester, and thence over the New York Central—Rome, Watertown & Ogdensburg division—to Norwood, and thence over the Central Vermont Railroad to Burlington, Vermont, on petroleum and its products in carloads?

Mr. KELLOGG. Objected to as incompetent. The tariffs are the best evidence. Also that it calls for the conclusion of the witness as to the legal construction of the tariff.

A. Under the custom then prevailing, the through rate by the route named would be the combination of the three factors, namely, 9 cents a barrel from Olean to Rochester, when in tank cars; 11 cents per barrel, when in box cars, plus the rate from Rochester to Norwood of 9 cents per 100 pounds, plus the rate from Norwood to Burlington of $23 per car.

Q. If, in addition to the documents you have just examined in this connection, you had before you the tariff I now show you,

10590 Western New York and Pennsylvania Railroad Company's Tariff I. C. C. No. 161, naming rates between Olean and points on the Western New York & Pennsylvania Railway, and, among others, a rate from Olean to Rochester, 5th class, 9 cents per 100 pounds, and calling your attention to the exceptions of the Pennsylvania Railroad to Official Classification I. C. C. No. 1977, and particularly to this language on page 6: "Petroleum and its products as follows, listing products in tank cars, barrels, cases, or iron drums in carloads, when rating is not provided for in special freight tariffs, 5th class." With those documents before you, in addition to the others, would you change your answer as to the rate that you would quote from Olean to Burlington?

Mr. KELLOGG. Same objection.

A. Preference would be given every time to the special commodity tariff naming the specific rate.

Q. That is, you would still abide by the rate quoted by you?—A. Yes, sir; that tariff is a general one, and of course the special one, providing for a particular movement takes precedence over it.

Q. I also show you Rutland Railroad Company's Local Freight Tariff No. 1, in connection with the tariff previously shown you, naming a rate of $23 per car from Norwood to Burlington, and I call your attention to the fact that this Local Freight Tariff No. 1 names a 33-cent per hundred pounds rate between Norwood and Burlington on articles of the 3rd class, and ask you to assume that the exceptions to the official classification of the Rutland Railroad put oil
10591 in the 3rd class. With the documents showing such a class rate before you, would you have any other or different rate to quote than that which you previously gave?—A. If during the period you inquire about Central Vermont Railroad Interstate Freight Tariff No. Y5 was still in effect, I should say that Central Vermont Tariff No. Y5 would be the proper rate to apply, as it provided a specific rate for a specific movement and took precedence over the general tariff.

Q. That is, the tariff naming a rate of $23 per car from Norwood to Burlington?—A. Yes, sir.

Mr. MARTYN. It is conceded that Central Vermont Tariff No. Y5 was in effect until canceled by Rutland Railroad Company Tariff, I. C. C. 1436, effective December 6, 1905.

An adjournment was here taken until the morning of Tuesday, October 20, 1908, at 10.30 o'clock.

10592 ROOM 803, FEDERAL BUILDING, CHICAGO, ILL.,
Tuesday, October 20, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

FRED ZIMMERMAN, recalled, and his direct examination resumed, as follows:

By Mr. MILLER:

Q. Mr. Zimmerman, I show you petitioner's Exhibit 592, a commodity tariff of the Missouri Pacific Railway Company, bearing I. C. C. No. 535, applying on petroleum oil and its products, in carloads, from St. Louis, Missouri, to Alexandria, Louisiana, a rate of 25 cents per 100 pounds, effective July 16, 1896. Assume in answering this question that that tariff had not been canceled, but continued effective through the year 1904. I further show you Tariff I. C. C. No. 1744 of the Missouri Pacific, being a joint freight tariff of that road and other roads, naming rates from St. Louis, Missouri, Kansas City, Missouri, and divers other points, to Shreveport, Monroe, Alexandria, and Boyce, Louisiana, effective August 10, 1897, which tariff is defendants' Exhibit 190A. You may assume that this tariff also remained uncanceled and effective during 1904.
10593 I ask you to examine these tariffs and to state whether or not as a tariff expert or a tariff rate clerk or agent you could quote a rate from St. Louis, Missouri, on petroleum and its products in carloads to Alexandria, Louisiana, during the year 1904, and, if so, what, in your opinion, the lawful effective rate shown or named in those tariffs was. The question is whether during that year you could have quoted a rate; and if so, what?

Mr. KELLOGG. That is objected to as incompetent, the tariff is the best evidence, and calling for the conclusion of the witness as to the legality of the tariff.

A. Missouri Pacific I. C. C. No. 1744 seems to be a general tariff in its application, naming rates from various territories and groups. It does not specifically cancel this specific tariff, I. C. C. No. 535, applying from St. Louis, Missouri, to Alexandria, Louisiana, dated effective July 16, 1896. Furthermore, Missouri Pacific I. C. C. No. 6848, dated effective August 17, 1904, cancels I. C. C. 535, and therefore by inference means to state that I. C. C. 535 was in effect up to August 17, 1904. If there was nothing issued in 1904 subsequent to this I. C. C. 6848, I would say that the specific tariffs, namely, I. C. C. 535 and 6848, took precedence over the general tariff No. 1744, and that the rate was 25 cents per 100 pounds during the year 1904.

Q. I also show you petitioner's Exhibit 596, the same being Tariff I. C. C. No. 830 of the Missouri Pacific, making a rate of 15 cents per 100 pounds from St. Louis, Missouri, to Alexandria, Louisiana, on petroleum and its products, in tank cars, on shipments
10594 destined to points in Louisiana on the Southern Pacific except certain stations between Alexandria and Cheyneyville, on joint track; also Government's Exhibits 597 and 598, which certain local State tariffs, making rates from Alexandria to divers points on the line of Morgan's Louisiana & Texas Railroad & Steamship Company, a branch of the Southern Pacific Railway, of varying rates to those different points; also a tariff designated as Through Freight Tariff No. 16F, I. C. C. No. 168, a tariff purporting to name through

rates from St. Louis to the same points that are indicated upon the two local State tariffs, Government's Exhibits 597 and 598, the through rates named in the through freight tariff referred to being higher rates than the combination of the 15-cent rate from St. Louis to Alexandria and the rate made by the local State tariff. You may assume that the supplements to that tariff do not affect the rates named in the through freight tariff. Please examine these tariffs any state, if you can, what rate you would apply and would have been applicable under those tariffs, according to the usage and practice of railroads at that time, during the period covered by the tariffs, between St. Louis, Missouri, and the points named on the local State tariffs, and what you would have quoted at that time, with all those tariffs before you, to a shipper applying for the rate as the lawful rate between those points on petroleum and its products, in carloads.

Mr. KELLOGG. Same objection.

A. Assuming that some of the points named in petitioner's Exhibits 597 and 598 are stations on joint track between Alexandria and Cheneyville——

Q. That is, you exclude those stations?—A. Yes, sir; the
10595 through rate would be made on the combination of the 15-cent rate named in I. C. C. No. 830, which is a specific tariff for a definite movement, combined with the rates named in petitioner's Exhibits 597 and 598 from Alexandria to the destinations named therein, which would make the through rate to Lafayette, say, 15, plus 18–33 cents per 100 pounds. I look upon I. C. C. No. 168, Through Freight Tariff No. 16F, as a general tariff applying rates from a wide stretch of territory, a so-called group tariff, and in 1904 and prior years these specific tariffs took precedence over the general tariffs.

Q. And was such the practice of railroads in establishing and quoting rates and transporting at rates quoted at that time?

Mr. KELLOGG. Same objection.

A. That was the custom.

Q. I now show you petitioner's Exhibit 669, naming a rate of 7½ cents per barrel of 42 gallons on crude petroleum and its products from Redondo, California, to Los Angeles, California, and you may assume that Edward Chambers, whose name appears at the bottom of that paper or rate sheet, was the general freight agent of the Atchison, Topeka & Santa Fe Railway Company in California, and that that paper was issued by him as such general freight agent; that this tariff or rate sheet was not filed with the Interstate Commerce Commission. I also show you a tariff of the Atchison, Topeka & Santa Fe System, I. C. C. No. 1381, which is referred to in the evidence for the Government in this case, and ask you to turn to page 9
10596 of that tariff, that tariff purporting to make a rate of 10 cents per barrel of 42 gallons on petroleum from Redondo to Los Angeles. I also show you tariff of the same railway system (the Santa Fe) numbered 5821, naming class rates between stations on the Southern California Railroad, being a part of the Santa Fe System, which tariff was not filed with the Interstate Commerce Commission.

You may assume that this tariff is governed, or was governed, by the western classification. Taking all these tariffs and examining them, will you state what rate you would name as the lawful rate to a shipper applying for such rate at that time on shipments of petroleum, in carload lots, from Redondo to Los Angeles, the shipments being destined to points in Arizona on the Southern Pacific Railway, and you may assume that under the western classification petroleum was in the 5th class in the absence of a special commodity tariff.

Mr. KELLOGG. Same objection.

A. Are there any amendments to I. C. C. 1381 which affect the rate?

Q. You may assume that there are not.—A. I should say, then, that, effective September 18, 1904, this specific rate covered in L. R. No. 188 of the Santa Fe (which presumably means local rate No. 188) of 7½ cents per barrel of 42 gallons, Redondo to Los Angeles, would apply.

Q. Now, assume that a shipment had been made during that time, and that the local agent of the railway company had charged the shipper and the shipper had thereupon paid the rate of 10 cents, while this 7½-cent tariff was in effect, and afterward a claim was made by the shipper against the railway company for
10597 overcharge, based upon the claim that the shipper was entitled to the 7½-cent rate, what do you say, as a tariff and freight expert, with reference to that claim, whether under those tariffs it should have been allowed and paid the shipper, or not?

Mr. KELLOGG. That is objected to on the same ground.

A. Under the custom then prevailing, and assuming it to be the same in that section of the country as around here, I should say that if the shipment was made during the life of this rate, L. R. No. 188, of September 18, 1904, the shipper would certainly be entitled to a refund down to the basis of a 7½-cent rate.

Q. I now show you Tariff I. C. C. No. A944 of the Grand Trunk Railway system naming a rate on petroleum and its products, in carloads, from Toledo, Ohio, to divers points, which document is defendants' Exhibit 124A, and which states it is effective September 12, 1904. In the first place, you may examine that tariff and state whether it makes a rate, and what rate, upon these commodities shipped from Toledo, Ohio, to Boston, Massachusetts.—A. 27 cents per 100 pounds.

Q. You observe that that tariff names a rate on petroleum products. What does it state about that—the commodity or traffic to which it applies?—A. "Petroleum products, carloads, in wood or tanks, crude and fuel oil, crude naphtha, crude and refined petroleum and products of petroleum, namely, lubricating oil, benzine, naphtha, gasoline"——

Q. Well, I do not think you need quote those. They are a list of petroleum products, are they?—A. Yes, sir.

10598 Q. Do you find anything in that tariff that applies it to any other commodity than these petroleum products?—A. No, sir; it is a clear-cut tariff on petroleum products.

Q. What do you find in that tariff as to its naming rates from Toledo to trunk-line territory?—A. On the second page, beneath the list of basing points, it says: "For list of stations to which above rates apply, see various fast freight line billing instructions," and on the front page it names roads in connection with which the tariff applies, and after listing quite a number it says: "And connections are specified in the following agents' guides and billing lists."

Q. Do you find the National Despatch-Great Eastern Line there listed?—A. Yes, sir.

Q. And what does it say about that?—A. National Despatch-Great Eastern Line, and names several others.

Q. And on the first page it reads that this is a tariff on these products from Toledo to points in Central Freight Association territory and trunk-line territory?—A. Yes, sir.

Q. I think perhaps it has been shown what the trunk-line territory is, but you may state, Mr. Zimmerman.—A. The trunk-line territory is the territory east of Buffalo, Toronto, and Pittsburg.

Mr. KELLOGG. And the central freight is what?

WITNESS. Is west of those, and north of the Ohio River, and east of the Mississippi River, except the northwestern portion of Illinois, which is not generally included in the C. F. A. territory.

10599 Mr. KELLOGG. And this makes rates to central and trunk-line territory both?

WITNESS. Yes.

Q. New England is called trunk-line territory, is it?—A. Yes, sir.

Q. You will observe that that tariff was effective December 12, 1904.—A. Yes, sir.

Q. I show you National Despatch-Great Eastern Line, Shippers' and Agents' Guide, No. 9, and you will observe that that document was effective January 1, 1903, which was prior to the date of the Grand Trunk tariff referred to. Would you say that that document, assuming that it was still in effect when this Grand Trunk tariff was issued—would you say that that Guide No. 9 was the document referred to on that tariff in the notation that you have read?

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. Yes, sir.

Q. You know what the National Despatch-Great Eastern Line is, I suppose?—A. Yes, sir.

Q. And you are familiar with its guide book?—A. Yes, sir.

Q. I desire to call your attention to the paragraph on page 1 of this Guide No. 9, under the heading of "Important instructions for the guidance of shippers and agents," to the effect that petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but that such shipments would be subject to special tariffs and local regulations of rail-

10600 roads interested. Please examine those two documents, the tariff and Guide No. 9, and state whether or not that tariff makes a rate on petroleum products from Toledo, Ohio, to Burlington, Vermont, and I invite your attention to page 26 of the guide,

to that portion of it which contains an alphabetical list of points of destination.—A. What is the question, please?

Q. Whether that tariff makes a rate on petroleum products from Toledo, Ohio, to Burlington, Vermont.

Mr. KELLOGG. You mean whether it makes the Boston rate?

Mr. MILLER. No; whether, taken in connection with the guide, it makes or furnishes a rate from Toledo to Burlington.

Mr. KELLOGG. Same objection.

A. There is no question but what a rate is definitely established on petroleum products from Toledo to Burlington, Vermont, by the use of the National Despatch-Great Eastern Guide No. 9 in connection with Grand Trunk Tariff I. C. C. No. A944, which rate would be the Boston rate of 27 cents per 100 pounds. Now, if you will allow me, I would like to state that as I interpret this Guide No. 9, which is general in its application, being used in connection with rates applying from Grand Trunk western stations and stations on connecting roads of the Grand Trunk, I note on page 1, in the second paragraph, it states: "The rates indicated in rates column are based on the ordinary current eastbound rates. When lower rates are issued on commodities, the instructions in this guide will not necessarily apply in connection with said reduced rates. In such cases agents and others interested must not undertake to transport traffic under
10601 the reduced rates until they have ascertained from the proper traffic official of the initial road that the roads interested are prepared to transport the commodity at the reduced rates." Now, here is a definite term on petroleum products from Toledo to Boston and other trunk line points, and specifically makes reference to this guide book, from which is clearly established a rate to Burlington, the same as to Boston, of 27 cents per 100 pounds.

Q. Have you had a large experience in handling fast freight line matters and in connection with the business of the use of their guide books or documents?—A. Yes, sir.

Q. To what exent?—A. The principal traffic of the Michigan Central Railroad from this section is to the East and is necessarily handled in connection with fast freight line, and their billing guides are used extensively in ascertaining the rates to other than the principal basing points in the East. Our own tariffs named the rates to the principal basing points.

The EXAMINER. Will you state what a "basing point" is?

WITNESS. A basing point means the larger centers, like Philadelphia, Boston, Rochester, Albany, and cities of great prominence and natural centers. The idea in calling them basing points is, usually, that a section of territory on the lines leading into one of these basing points from the West, and east of the next basing pont west, takes the same rate as the next basing point east. For instance, stations on the New York Central just west of Rochester would take Rochester rates.

Q. On eastbound traffic?—A. Yes, sir.

Q. Now, would your answer that a rate is made by this tariff on petroleum products of 27 cents, namely, the Boston rate
10602 from Toledo to Burlington, Vermont, on the Central Vermont Railway, apply also to all the other stations on the Central Vermont Railway named in the same way in this Shipping Guide No. 9 as Burlington is named?—A. If——

Q. I mean all stations named in the Shippers' Guide as taking Boston rates.—A. Yes, sir.

Mr. KELLOGG. Same objection to that.

Cross-examination by Mr. KELLOGG:

Q. Mr. Zimmerman, what are the most direct routes from Toledo to New England points?—A. There are about half a dozen that consider themselves direct routes. There is the Lake Shore, through Cleveland and Buffalo, in connection with the New York Central. There is the Michigan Central, through Canada, via Buffalo and Suspension Bridge, in connection with the New York Central and other eastern roads. There is the Pennsylvania, through Pittsburg and up through New York and the Harlem River; and the Grand Trunk, via Detroit, Port Huron, Toronto, on its main line, in connection with the Central Vermont and the Boston & Maine. There is the Canadian Pacific, E. D. T. & I., and Ann Arbor, connecting at Detroit from Toledo.

Q. That is sufficient, I think. Then, the Lake Shore in connection with the New York Central, and the Michigan Central in connection with the New York Central, would be competitors with the Grand Trunk Railroad?—A. Yes, sir.

Q. From Toledo?—A. Yes, sir.

Q. You are familiar, you say, with this Grand Trunk
10603 tariff, about which you have been testifying, and this Great Eastern Line billing instructions?—A. I am familiar with it, since I have seen it here. I was asked to interpret it.

Q. You never saw it until you came into the court room?—A. I saw it in Mr. Martyn's office.

Q. How long ago?—A. Oh, it was about a week or ten days ago, wasn't it?

Mr. MILLER. I think last Thursday.

Q. Was that the first time you ever saw it?—A. I do not recall whether I saw it before or not.

Q. Well, you are familiar with the tariffs over your line to New England points, aren't you?—A. I am more familiar with the tariffs in this section, as I am in direct charge of the business from this section.

Q. You used to be at Detroit, didn't you?—A. Yes, sir.

Q. During what years?—A. I was at Detroit up to October, 1899; that is, for four or five years.

Q. But the Michigan Central publishes rates from Toledo to New England points, including Boston, doesn't it?—A. Yes, sir.

Q. On oil?—A. I assume it must; yes.

Q. Now, isn't it a fact that the Michigan Central does not make the Boston rate applicable to New England points on oil, and did not during this time, and charged an arbitrary over the Boston rate to practically all New England points except on the Boston & Albany road and the Fitchburg division of the Boston & Maine?

Mr. MILLER. That is objected to as not cross-examination,
10604 not based upon anything in the direct examination, and as immaterial.

A. I don't know, because I have not had occasion to look into it.

Q. Will you look into it and see? I wish you to answer that question.—A. I will be glad to.

Q. Are you not familiar with the fact that during the last few years, up until about July, 1906, that the New England roads, with the exception of these two which I named, the Boston & Albany and the Fitchburg division of the Boston & Maine, did not prorate on oil shipments, but charged a local rate or arbitrary, as it is called, over the Boston rate?—A. I can not say that I am familiar with that proposition.

Q. Although for years you were at Detroit?—A. I was at Detroit prior to October, 1899, as I said.

Q. Didn't the condition exist at that time?

Mr. MILLER. I object to this on the same grounds as specified to the previous question, as not cross-examination.

Q. You have never looked into that question at all?—A. Not recently.

Q. Well, did you formerly?—A. I may have, away back in that time when I was in Detroit, and it seems to me that your statement is true with respect to some portions of New England.

Q. Yes.—A. But you yourself state that the B. & A. and the Fitchburg prorated. Now, it is logical to presume that the Central Vermont, being a constituent company of the Grand Trunk, and used on freight to Boston, would also prorate in connection with the Grand Trunk from Toledo.

10605 Q. That may be logical, but is it true?—A. Why, their tariffs are the best evidence, and they clearly show that that is a fact.

Q. Now, I ask you if it is not a fact that your own road, the Michigan Central, during this time you have been testifying to, refused to take oil for these points shown in this Great Eastern Billing Instructions at the Boston rates, but charged an arbitrary over the Boston rates?

Mr. MILLER. I object to that on the ground that it is not cross-examination and as immaterial.

A. I can not say.

Q. Have you the tariffs in your office?—A. They may be there.

Q. Well, they would be there, wouldn't they? You keep the tariffs of the Michigan Central road, don't you?—A. If the tariffs then in effect are still in effect, I would have them in my office.

Q. Well, during 1904 and 1905?—A. During 1904 and 1905.

Q. 1903, 1904, and 1905?—A. Yes.

Q. During the time that you have been testifying here?—A. I can not say offhand, Mr. Kellogg.

Q. Will you look to-day noon and see?—A. Yes.

Q. I want to examine those tariffs.

Mr. MILLER. I object to it on the ground stated and as tending to add to the petitioner's case in chief.

Q. Now, you say it would be natural that all the Central Vermont points should prorate because they are controlled by the Grand Trunk?—A. Yes, sir.

Q. But the Boston & Maine is not controlled by the Grand
10606 Trunk?—A. No, sir.

Q. Or the Michigan Central?—A. No, sir.

Q. Or the New York, New Haven & Hartford?—A. I do not understand it so.

Q. And isn't it a fact that those roads have during these past years that you name refused to prorate, but charge an arbitrary over the Boston rate?

Mr. MILLER. Same objection.

A. As I said, I am not thoroughly familiar with that question.

Q. Now, what guide book is used by the Michigan Central?—A. The Blue Line, the Canadian Southern Line, the North Shore Despatch, the Rutland-Michigan Central Line, and the Erie Despatch.

Q. You use the Blue Line, too, don't you?—A. Yes, sir.

Q. The Blue Line Guide Book is substantially similar to the Red Line Guide Book, isn't it?—A. They are supposed to be about the same; yes, sir.

Q. The Red Line Guide Book specifically excludes Boston & Maine Railroad points, taking Boston rates on petroleum?

Mr. MILLER. I object to that as not cross-examination, and I think the document ought at least to be shown to the witness, or else I object on the ground that it shows for itself.

[A document was handed to the witness.]

Mr. MILLER. May I ask counsel what book is now shown to the witness?

Mr. KELLOGG. The Red Line Guide Book, published by the Vanderbilt systems.

Mr. MILLER. The Red Line Guide Book, is it?

10607 Mr. KELLOGG. Yes.

A. On page 4 of this Red Line Eastbound Billing Instructions, No. 42, which is dated August 1, 1904, appears this statement under the caption "Restrictions governing traffic to Boston & Maine Railroad points," "Shipments of petroleum oil destined to points on or reached by the B. & M. R. R. can not be taken at rates named in this tariff unless such points are prefixed with reference number '5.'" On page 55 of the same book I find reference No. 5, which reads: "The stations marked thus—5—Boston rates apply on oil, all kinds."

Mr. MILLER. "Marked thus"—what do you mean by that?

WITNESS. Thus—5.

Q. That is prefixed only to the Fitchburg division, isn't it?—A. I don't know.

Q. Will you look and see?—A. Give me a point that is not on the Fitchburg division and then I can tell you.

Q. Portland, Maine.—A. There are, I should judge, a dozen or more stations.

Mr. MILLER. Take your time for this, Mr. Zimmerman. The book is a pretty large one.

Mr. KELLOGG. He knows very well from his general knowledge, I think.

Mr. MILLER. Well, I object to that. I do not think it is fair for counsel to reflect upon the witness in that way.

Mr. KELLOGG. I am not reflecting on him in the slightest degree. I think he knows from his general knowledge.

Mr. MILLER. Counsel has no sort of justification for making any such remark.

10608 Q. Will you take them up and see if those places do not entirely relate to the Fitchburg division, as I asked you?—A. Portland, Maine, is not prefixed with reference 5.

Q. Then Portland, Maine, does not take the Boston rate?—A. On oil?

Q. On oil?—A. Not according to this book, unless there is some individual tariff of the Lake Shore that supersedes, as in the Grand Trunk issue, this restriction that I read, named on page 4.

Q. Now, has the Michigan Central road, your road, got any tariff that supersedes it?—A. I do not know.

Mr. MILLER. I object to that as not cross-examination.

Q. Will you tell me how it is you do not know anything about your own tariffs, but know so much about the Grand Trunk?

Mr. MILLER. I submit to the examiner that I have a right to enter my objection without interruption.

The EXAMINER. Wait a moment.

Mr. MILLER. I would like to request counsel, when I start to object, to give me an opportunity to do so.

The EXAMINER. Mr. Kellogg evidently did not hear you.

Mr. KELLOGG. I did not hear you.

Mr. MILLER. I take it so, but I would like to make this request.

Mr. KELLOGG. Certainly.

Mr. MILLER. I object to the pending question and to all like questions. I suppose I can make one objection here to all of this?

Mr. KELLOGG. Oh, certainly.

10609 Mr. MILLER. On the ground that it is not proper cross-examination, that it is immaterial and irrelevant, and as an attempt on the part of counsel for the Government to add to his case in chief by improper cross-examination of this witness.

Q. You can tell in your office, can you not, whether the Michigan Central made rates during 1903, 1904, and 1905 to points other than those on the Fitchburg division of the Boston & Maine road and the Boston & Albany road equal to the Boston rates?—A. On oil?

Q. Yes.—A. As I say, if the tariffs then in force are still in effect, my files probably contain them, and I could probably answer that question.

Q. Will you look to-day noon and see if you have those tariffs?—A. I will be pleased to; yes, sir.

Q. And produce them?

Mr. MILLER. Would you have to get that information from your Detroit office, Mr. Zimmerman?

WITNESS. As I explained, Mr. Miller, if those are live tariffs—that is, if they are still in effect—I would probably have them in my files.

Mr. MILLER. Supposing it was a tariff of 1903, 1904, or 1905, which is not now in effect?

WITNESS. Then, that would be in the Detroit files.

Q. You can send to Detroit and get them here to-morrow morning, can't you?—A. Well, I can——

Q. You are perfectly willing they should be shown here in evidence, aren't you?—A. Oh, yes.

10610 Q. Will you send to Detroit and have them brought here?—A. I will be pleased to; yes, sir.

Q. All right. Now, you are familiar with what the Fitchburg division of the Boston & Maine road is, are you not?—A. Yes, sir.

Q. And you know the location of the Boston & Albany?—A. The Fitchburg division is colored blue on this map now before me.

Mr. MILLER. Is this a reference to some map in evidence?

Mr. KELLOGG. Yes; petitioner's Exhibit 672.

Q. The Boston & Albany is colored green. I have no doubt you are familiar with this, aren't you?—A. In a general way, yes. I have not traveled through that country very much.

Q. Now, I show you the Lake Shore & Michigan Southern tariff from Toledo, effective November 2, 1903, I. C. C. No. A1353. Will you please find the rate on petroleum oil from Toledo to Portland in that tariff?

Mr. MILLER. Same objection to this as to the preceding question.

Q. Assuming there are no changes made by supplement to the tariff.—A. By that tariff, assuming there are no supplements to it or conditions modifying it, I note on page 21, under list of Boston & Maine stations, "Portland. Note 33;" and again, 507, "Portland. Note 33." Referring back to Note 33 the statement is: "To make through rate add 10 cents per 100 pounds to rate shown to Boston. Waybill to Boston, using per cents applicable to that point, and show

10611 10 cents per hundred pounds as an arbitrary for B. & M. R. R." On page 3, the rate shown from Toledo to Boston is 27 cents.

Q. That would make the rate to Portland 37 cents, wouldn't it?—A. Yes, sir; as showing that these notes in so-called fast freight line billing books are quite general in their application, take Rutland, Vermont, for instance, on the Rutland Railroad. Note 5, which was previously referred to, is not shown there, and yet this Lake Shore tariff shows a rate from Toledo to Rutland of 44 cents. So that goes to show that the guidebook cannot be taken independently of the

tariffs naming the specific rates. Furthermore, I note that this tariff of the Lake Shore road does not name any rates in connection with the Grand Trunk.

Q. Certainly not.—A. As Portland, Maine, is on the Grand Trunk road, it may be the Lake Shore had a rate from Toledo to Portland via Detroit and the Grand Trunk road.

Q. Portland, Maine, is on the Boston & Maine, too, isn't it?—A. Yes, sir.

Q. And the most direct route for the Lake Shore to reach Portland would be by the Boston & Maine, wouldn't it?—A. It would give them the longest haul, but I don't know that it is the most direct route.

Q. That is, they could haul it west of Toledo and turn it over to the Grand Trunk?—A. No; it would be directly north. You are talking about the rate from Toledo.

Q. I say the Lake Shore would not be very apt to deliver the stuff to the Grand Trunk when it has its own line running to Albany in connection with the New York Central, would it?—A. If, as
10612 appears from the showing thus far, the B. & M. refused to prorate with the Lake Shore on oil from Toledo, it would seek another route to Portland, Maine, and if the Grand Trunk would prorate with them via Detroit likely as not there may be a rate from Toledo via Detroit and the Grand Trunk to Portland.

Q. Take Rockland, then. That is on the Grand Trunk, is it?—A. That is on the Maine Central, as I recall it.

A recess was here taken until 2 o'clock p. m., at which time the cross-examination of the witness was resumed by Mr. Kellogg.

10613 Q. Did you look up the Michigan Central tariffs?—A. I have my clerks working on that now, Mr. Kellogg.

Q. Well, then, we will pass that until you get them.—A. Yes, sir.

Q. You were shown petitioner's Exhibit 608, which is a rate from Olean to Rochester of 9 cents per barrel, and petitioner's Exhibit 612, which was a rate from Rochester to Norwood of 9 cents per hundred, and also a tariff of $23 per car from Norwood to Burlington, and asked if you were to name a rate from Olean through to Burlington, what rate you would name; and, as I recollect, you said you would name those two rates from Olean to Rochester, of 9 cents per barrel, from Rochester to Norwood of 9 cents a hundred, and the $23 rate to Burlington on through shipments. That is correct, is it?—A. Via Rochester; yes, sir.

Q. Now, you were assuming that you were the agent at Olean, were you?—A. No; I was not asked with respect to those tariffs to assume that I was the agent at anything.

Q. You mean if you were somebody off in Chicago who had these rates before you and were not the agent of the railroad company, or what do you mean?—A. I suppose the record will show just the question I was asked.

Q. Well, what do you mean?—A. But I was not asked what you——

Q. What do you mean by naming a rate? That you, as an expert here in court, with these tariffs before you, would name that rate? Is that what you mean?—A. I mean that as a rate man, with those tariffs before me, I would name that rate; yes, sir.

Q. Now, suppose you were the agent of the Pennsylvania
10614 road at Olean of whom the shipper would naturally inquire?—A. Yes, sir.

Q. What rate would you name?—A. I think I would ask the general office for a rate.

Q. You would not be able to name him the rate at all, would you, that you named?—A. It would depend on whether I had those three tariffs or not.

Q. You notice that those tariffs are marked "Not to be posted?"—A. I did not notice that. I was not looking at that feature [examining the tariff].

Q. Now, assuming that those tariffs were not to be posted, and you were the agent at Olean, you would name the 26½-cent rate to Norwood, and the $23 a car rate, wouldn't you?—A. No, sir.

Q. Why?—A. Because under the conditions that existed at that time, and having this rate from Olean to Rochester before me—this "Not to be posted" does not signify that the agent at Olean did not have it.

Q. What does it signify?—A. It signifies that it is a State rate, and some roads were accustomed to placing on their strictly State rates that term "Not to be posted" to distinguish them from the interstate tariffs that were hung up in the depot in two different places.

Q. What does "Not to be posted" mean?—A. Just what I have stated, Mr. Kellogg, as I interpret it.

Q. Then, you would understand that "Not to be posted" means that some roads do not post their State tariffs and hang them up in the station?—A. Did not at that time.

10615 Q. Why didn't they say that on the tariff, then? Does not "Not to be posted" mean that they are not to be posted in the ordinary acceptation of that term by railroad men?—A. No; it does not.

Q. What do you mean by posting a tariff? You are an old experienced tariff man.—A. The posting of a tariff meant in those days placing it in two places in the depot—in the freight house.

Q. What are the places?—A. Whatever the agent might select.

Q. Yes; and "Not to be posted" means not to place them in those places?—A. Not to place them in those places.

Q. Now, in one of those places was the tariff on file for daily use?—A. Not necessarily.

Q. What was it?—A. The agent might have had, and likely did have, in addition to the two places that he posted, a tariff file of his own that he used currently.

Q. Did station agents ordinarily post them on the wall?—A. Yes and no.

Q. Well, which is it, yes or no, ordinarily?—A. Both. Some agents did and——

Q. They did or did not post them on the wall ordinarily?—A. Some did and some did not. There was no——

Q. Then "Not to be posted" would mean not to be posted on the wall?—A. Correct; yes, sir.

Q. And not to be put in the file where the agent kept them?—A. To be put in his file; yes.

Q. Well, what file?—A. The file that he kept.

Q. How many files does an agent keep ordinarily?—
10616 A. Why, it depends on the size of the station.

Q. Take it in a station like Olean, New York, how many files does he ordinarily keep?—A. He certainly keeps one file for his own use.

Q. Now, what is that for?—A. For his own use.

Q. For what use—to quote to shippers, isn't it?—A. And for billing purposes.

Q. And for billing purposes, yes.—A. Yes.

Q. Now, "Not to be posted" would mean what, then, in relation to that file?—A. It could be put in that file for his own use.

Q. There is no question that it could be, but what does it ordinarily mean?—A. I don't know just what the road placing that notation on that tariff meant, but you ask me my opinion. I can not state definitely. Now, my opinion is that it was not to be hung on the wall.

Q. Yes; but was to be kept in the file?—A. Yes.

Q. Then, you do not agree with Mr. Hurlbut that it was not to be kept in the ordinary file?—A. Kept in the agent's file; yes.

Mr. MARTIN. Mr. Hurlbut did not testify to that.

Q. Now, will you tell me how the agent at Olean would quote a through rate to Norwood if he did not have the tariff from Rochester to Norwood?—A. If he was on to his job he would ask his general freight office for a rate.

Q. And you assume that the general freight office would quote these secret tariffs, do you?—A. I do not understand those to be secret tariffs, in the——

10617 Q. Why not? Why weren't they secret tariffs?—A. They were open to anybody.

Q. How do you know they were open to anybody?—A. I suppose they were.

Q. Well, you are just supposing it, aren't you?—A. Yes, sir.

Q. You do not know anything about it, do you?—A. You are just asking my opinion, are you not, Mr. Kellogg?

Q. You say they were not secret tariffs. How do you know they were not?—A. Well, to say that—I do not intend to confirm your impression that they were secret.

Q. Do you know anything about whether they were secret or not?—A. No; I do not; therefore, I am not going to confirm your impression that they were secret.

Q. Now, if they were secret tariffs, you don't think that you would quote them if you were the agent at Olean, do you?—A. I am not inferring that they were secret tariffs, Mr. Kellogg.

Q. Why would they direct the stuff to be blind billed, then, if they were not secret—will you tell me?—A. I don't know as they did.

Q. Well, but they did. Now assume—the proof here shows it and there is no doubt about it—that the stuff was blind billed.—A. I don't know why they did that.

Q. That would tend to keep the rate from the public, wouldn't it?—A. Why, the public has not access to the billing.

Q. But the railroad agents have, haven't they?—A. Yes.

Q. And clerks?—A. Yes.

Q. And if it was blind billed, it would naturally keep the
10618 knowledge from the railroad clerks and agents, wouldn't it?—A. Why, I don't—they would have to instruct it to be handled in that way, and those instructions would naturally reach both the forwarding and the terminal agents.

Q. Now, let us see if they would. If the stuff was blind-billed at Olean, consigned from Olean to Burlington, and the waybill did not show any rate, the agents along the line would not know what the rate was, would they?—A. What do you mean by the agents along the line?

Q. Why, the agents handling the waybill. The agents of the railroad handling the shipping bills would not know the rate, would they?—A. If the rate did not appear on the bill, of course they would not know that rate.

Q. Very well. Now, in answering that you would quote these rates as lawful rates from Olean to Burlington, you assume, do you not, that it was legal to ship on a through consignment from Olean to Burlington, Vermont, using local rates that were not filed with the Commission?—A. That was the custom, Mr. Kellogg.

Q. Do you assume that in your answer, saying that you would quote that as a legal rate?—A. That was the custom.

Q. Do you assume that you would have a right to use that in answering that you would quote that?—A. I state that that was the custom back a few years ago.

Q. Is it the custom now?—A. No, sir.

Q. Since when hasn't it been a custom?—A. Oh, the last few years.

Q. How many years back?—A. Since the combination of locals ceased to be used, in 1906.

10619 Q. What time in 1906?—A. Oh, about the time of the passage of the Hepburn bill.

Q. Was there any order made by the Commission that changed the situation?—A. There were certain letters written by the Commission and informal opinions, and eventually, I think, a formal opinion expressed that it was improper to use a combination of locals where there was a through published rate in effect.

Q. Was not that order of the Commission made away back in 1888?—A. I don't know.

Q. You don't know anything about that?—A. No, sir.

Q. You never heard that the Commission in 1888 made an order requiring the locals that were used as a part of a through route to be filed, did you?—A. No, sir.

Q. I show you an order of the Commission dated February 13, 1888, and ask you if you ever heard of it [handing witness a pamphlet].

Mr. MILLER. What is it the counsel shows the witness?

Mr. KELLOGG. I show the witness a compilation of orders.

Mr. MILLER. Is it marked?

Mr. KELLOGG. Published by the Interstate Commerce Commission. It has been in evidence several times.

Mr. MILLER. It appears in the record somewhere?

Mr. KELLOGG. Yes.

Mr. MILLER. All right.

A. (After examining pamphlet.) Now, what is your question?

Q. If you ever heard of that order made in 1888.—A. Well,
10620 if I did (and I do not recall it), it certainly never made a very deep impression on me, I am sorry to say.

Q. You say you did hear of it, or not?—A. I say if I did——

Q. If you did?—A. I do not recall it, and it did not make a very deep impression on me; but you will notice it says "should" be filed, not "must."

Q. What do you understand by the English language where it says "Tariffs should be filed?"—A. Well, that sort of——

Q. Let the railroads do as they pleased?—A. In fact, you may——

Q. Was that a gentle admonition that the railroads could heed or not, just as they pleased?—A. I don't know what they meant, Mr. Kellogg.

Q. You don't know?—A. No.

Q. You don't know what this means: "Roads located wholly in one State or Territory which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through contracts or bills of lading should file tariffs covering such traffic with the Commission?" Don't you know what that means?—A. Well, I can only testify as to the customs at that time, Mr. Kellogg.

Q. I ask you if you know what that means.—A. It means that the Commission would like to have those tariffs filed with them, I suppose.

Q. But the railroads could do as they pleased about it?—A. I do not say that, Mr. Kellogg.

10621 Q. Does not "should file" mean that they should be filed, just exactly what it says? Don't you understand it that that is an order of the Commission?—A. Is it issued as an order?

Q. Yes, sir; signed "For the Commission, C. C. McCain, auditor." It is an order of the Commission. It was made at that time. There is no question about it.

(Witness and Mr. Miller examine the pamphlet.)

Q. Well, if you don't know anything about it, we will pass it. You say if you heard of it it did not make any impression on you. Now, how do you know that it was the custom for railroads to use a local State rate that was not filed with the Interstate Commerce Commission as a part of a through shipment between points in different States?—A. That was the practice.

Q. How do you know it was the practice?—A. Because it was done.

Q. Did your company do it?—A. I don't—I—— [Witness hesitates.]

Mr. MILLER. You may answer prior to October 1, say, in 1905.

WITNESS. Yes.

Q. Where and when?—A. I don't recall where or when.

Q. Do you recall any instance at all where it was ever done by your company?—A. Not any specific instance. I know, in a general way, that that was the practice, Mr. Kellogg.

Q. How can you know in a general way if they did not do it?—A. I did not say they did not do it.

Q. But if you can not say that they did it, how can you
10622 now testify that you know in a general way that it was done?—A. Like any man can testify to a matter of general knowledge, that he can not recall any specific instance to illustrate it.

Q. You can not name a single rate or a single tariff that was not filed with the Commission that was used for interstate shipments, can you?—A. I can't recall now; no, sir.

Q. Can you recall any since 1906?—A. No, sir.

Q. Nor before?—A. I can't recall any specific instance.

Q. You don't know anything about any other railroads except your own, do you?—A. Except by general report.

Q. Report of whom?—A. General knowledge as to the customs of railroading.

Q. Where did you get your general knowledge?—A. Being in the railroad field, naturally that drifted to me.

Q. Have other railroad men told you that that was their custom?—A. It was a matter of common knowledge, Mr. Kellogg.

Q. How did you get the common knowledge?—A. Oh, talking and——

Q. Talking with whom?—A. Oh, any number of men.

Q. Other railroad men?—A. Yes; other men.

Q. Have other railroad men told you that it was the custom on their roads to do that?—A. They have not told me so in so many words. I simply knew it was so.

Q. You were not on the other roads, were you?—A. No.

Q. How do you know it, then?—A. Common knowledge, Mr. Kellogg.

Q. Common knowledge; yes.—A. Yes, sir.

Q. You have been with the Michigan Central how many years?—A. 17 or 18 years.

10623 Q. You understand, do you, that prior to 1906 it was legal to make a through bill of lading of goods from, say, New

York to San Francisco, and use as the basis of that shipment rates in each State that were not published or filed with the Commission?—A. I am not pretending to pass on the legality of that question. All I can say is that it was the custom to use a combination of locals.

Q. And yet you can not name any case where it was ever done?—A. No, sir.

Q. I show you Tariff No. 24, about which you testified yesterday or this morning, together with the Illinois classification therein referred to.—A. Yes.

Q. Those are the documents you testified in relation to this morning. What is the rate on carloads of oil from Chicago to East St. Louis under that tariff and the Illinois classification—petroleum oil, I mean? You understand, I think.—A. Carload lots?

Q. Yes; in carload lots.—A. This classification from which you asked me to quote, I notice, does not bear an I. C. C. number.

Q. Yes; it has. It is filed with the Interstate Commerce Commission. It does actually bear an I. C. C. number. It may not on that copy, but I am simply using a copy. The testimony, Mr. Miller, shows that.

Mr. MILLER. The only one that was in the Alton case bore a mark—File No. 6 or File No. 8.

Mr. MARTYN. It was admittedly not in the files of the tariffs of any of the railroads involved.

Mr. MILLER. But for the purposes of this question use that.

10624 The question is to use those two documents.

Q. Use those two documents, both of which were filed with the Interstate Commerce Commission.—A. I should say from those two documents that the rate from Chicago to East St. Louis would be 18 cents, but I would not think of resting there.

Q. Now you are speaking from those two documents?—A. Yes, sir.

Q. Now I show you I. C. C. Number 1203, being the application sheet of the Chicago & Alton Railway, which names that Tariff No. 24, and ask you, with that additional document before you and none other, whether that rate was made applicable to Whiting by that document?

Mr. MILLER. That is, you take——

Mr. KELLOGG. Those three documents.

Mr. MILLER. Those three documents and none others?

Q. I have said so, those three documents. That makes it applicable, does it, with those three———A. With those three documents alone?

Q. With those three documents alone, that 18-cent per hundred rate is applicable from Whiting to East St. Louis, is it?—A. With only those three documents before me, why, that is the rate.

Q. Now, the Tariff No. 24 is the first one scheduled in the schedule, is it not?—A. Yes.

Q. Now, if those three documents were filed with the Interstate Commerce Commission and none others, no commodity rates filed or other rates filed, and you were examining the files

10625 of the Interstate Commerce Commission, you would quote the rate as 18 cents, wouldn't you?

Mr. MILLER. I object to that, because no person in the Interstate Commerce office is authorized by law to quote rates to shippers.

Mr. KELLOGG. Oh, yes; they are.

Q. What is your answer?—A. Surely an expert in the office of the Interstate Commerce Commission would know, having knowledge of other commodity rates between Chicago and St. Louis, that that rate of 18 cents was not the proper rate.

Q. That is, if he had knowledge of other tariffs; but suppose he had no knowledge except the files of the Interstate Commerce Commission?—A. Well, this very tariff here, it seems to me, shows plenty of rates that would indicate that 18 cents is away out of line. For instance, take cotton-seed oil in tanks, 10 cents.

Q. But I am asking you, if he had no knowledge of any other tariffs except those on file with the Commission?

Mr. MILLER. The witness is taking Tariff 24 there.

Q. I am not talking about cotton-seed oil. I am talking about petroleum oil.—A. Frankly, Mr. Kellog, I do not think any clerk in the Interstate Commerce Commission would put himself in the position of quoting 18 cents——

Q. Why?—A. ——in the face of these other conditions here shown in this Tariff I. C. C. No. 3.

Mr. MILLER. That is the Chicago & St. Louis Freight Association Tariff 24, is it?

Mr. KELLOGG. Yes.

10626 WITNESS. Yes, sir.

Q. Why wouldn't he?—A. Because here cotton-seed oil in tanks is 10 cents, for instance.

Q. That is, you mean, cotton-seed oil in tanks being 10 cents, 18 cents was an unreasonable rate for petroleum, do you?—A. Yes, sir.

Q. That is what you mean?—A. Yes, sir.

Mr. MILLER. Why, certainly.

Q. And that he would suspect that there was some other tariff?—A. Yes, sir.

Q. That is what you mean?—A. Yes, sir.

Q. Now, referring to that application sheet 1203, does it specifically name anywhere in it the 6-cent rate that you say you would quote, or the tariff that contains it? Does it specifically state it there? Is it scheduled there anywhere in that list?—A. No; on the other hand, it is not excluded by this.

Q. It is not scheduled by it?—A. It is not.

Q. Now, after 1903 the Interstate Commerce Commission under their directions required the tariffs to be scheduled, didn't they, in the application sheets; in fact, after 1901?—A. I heard you so state, Mr. Kellogg, but I am not quite clear on that.

Q. You are not clear on that?—A. That is a record, if any, of our tariff bureau.

Q. What is that?—A. That would be a record of our tariff bureau, if there is any such.

Q. Haven't you had any such correspondence on your
10627 road?—A. They might have had on our road, but I do not know of any in my office.

Q. Would that correspondence be with you, or with your traffic manager?—A. With the general freight agent.

Q. It would not be with you, then?—A. No, sir.

Q. So you don't know whether you had such correspondence or not?—A. No, sir.

Q. Then you assume, do you, in quoting that 6-cent rate, that it was a rate that you would know about and have in your office?—A. Yes, sir.

Q. And you assume that it was not a secret rate for the benefit of one shipper?—A. Yes, sir.

Q. And you assume that it was in the hands of the agents of the railroad company whose duty it was to quote rates?—A. Yes, sir.

Q. And if it was not so in their hands and they did not know of it, then your answers would not apply, would they?—A. Well, I don't see why you should ask me to assume that.

Q. Because the evidence is that it was not in the hands of agents generally.

Mr. MILLER. I object to that. There is not any such evidence. The evidence in the Alton case was that it was in the hands of several of those agents.

Q. I am talking about this case. You have not looked in your office to see whether you can find that Michigan Central tariff or not?—A. I have my clerk looking it up now, Mr. Kellogg.

Q. Well, till you get that, then, I will excuse you.

Mr. MILLER. Are you through, Mr. Kellogg?

10628 Mr. KELLOGG. Yes, until he gets that; and then I want to cross-examine him further.

Redirect examination by Mr. MILLER:

Q. Referring again to Chicago & St. Louis Traffic Association Tariff No. 24, I. C. C. No. 3, to which Mr. Kellogg referred you, there is no mention of petroleum or the products of petroleum in that tariff, is there? In mentioning the rate of 18 cents you referred to a class rate, did you?—A. Yes, sir.

Mr. KELLOGG. That was a class rate, certainly.

WITNESS. A 5th class rate, Mr. Miller.

Q. 5th class rate. You say that in that tariff there are other commodities, and you mention cotton seed, that had so much lower a rate?—A. Cotton-seed oil.

Q. Cotton-seed oil—as to make the 18-cent rate on petroleum and its products improbable—so improbable that you would suspect it. Is that right?—A. Yes, sir.

Q. There is a list in that tariff of about 150 different commodities and groups of commodities, is there not, with commodity rates?—A. Yes, sir.

Mr. KELLOGG. If he has counted them he can testify.

Mr. MILLER. They are numbered there.

WITNESS. They are numbered. There are 150.

Q. Just 150, aren't there?—A. Yes, sir.

Q. And some of those contain groups of commodities?—A. I did not catch that.

Q. Some of those numbers contain groups of commodities,
10629 packing-house products, or some such things as that. I don't know that it is true of that, but there are certain numbers there that contain groups of commodities?—A. Yes.

Q. Do you find there commodities in that list having a rate as low as 6 cents or 7 cents from Chicago to East St. Louis?—A. I find a rate of 6 cents on brick, pressed and common, minimum weight 40,000 pounds; one of 7 cents on cement.

Mr. KELLOGG. All of that has been gone over once.

Mr. MILLER. Is the whole tariff in evidence?

Mr. KELLOGG. All those rates he is talking about have been gone into.

Q. I see. Now, in applying the 18-cent rate to oil in your cross-examination you used the other pamphlet, which Mr. Kellogg referred to as the Illinois Classification, to find in what class petroleum and its products was listed, and you found it under the 5th class?—A. Yes, sir.

Q. Now, will you turn to that—turn to 5th class in the tariff?—A. Yes, sir.

Q. Have you the classification there? Find it in the classification.

(Document handed to witness by Mr. Durand.)

Q. Do you find in that classification where petroleum and its products are included in the 5th class, any notation to indicate that the shipments, when put under that class, are at the owner's risk? In the first place, will you look through that document and see if you find in the classification, with respect to certain proportions of the classification, that certain commodities are so classified with the notation "O. R.," the letters "O. R.?"

10630 (Witness examines the document.)

Mr. KELLOGG. I suggest, if the witness has got to look that through, that he get off the stand and wait until he can have time.

A. What was the question, please?

Q. Whether you find in that classification any of the articles under the class in which they are placed, that they are placed there with the notation "O. R." in connection with them.—A. Yes, sir.

Q. Do you find upon that tariff any explanation of what "O. R." means?—A. Yes, sir.

Q. In that classification?—A. Page 1.

Q. What does it mean?—A. "O. R.," "For owner's risk."

Q. Does that mean that the shipment is at the owner's risk?—A. Yes, sir.

Q. Now, turning to the classification, "Petroleum and its products," under the 5th class, will you please state whether you find any such notation there—whether the classification of petroleum and its

products under the 5th class was at the owner's risk or for the owner's risk?—A. No, sir.

Q. You do not. Now, referring to the cross-examination by Mr. Kellogg with respect to the 9-cent tariff from Olean to Rochester, and to the words "Not to be posted," and to the question upon cross-examination by Mr. Kellogg as to the meaning of those words, did you mean in your answer that the word "posting" there referred to the requirement of posting in section 6 of the interstate-commerce act as it was in effect from March 2, 1889, to the passage of
10631 the Hepburn Act, in 1906, that copies of the tariffs governed by section 6 of the interstate-commerce act should be "posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and be conveniently inspected?"—A. Yes, sir.

Q. I think you said you did not think that that referred to the keeping of a copy of the tariff in the hands of the agent for quotation or reference, or in the traffic office. You did not intend to say that you meant by posting, the mere keeping of the tariff, or a copy of the tariff, in the hands of the agent?—A. No; the agent certainly had a copy.

Q. Of both posted and unposted tariffs?—A. Yes, sir.

Q. All the tariffs?—A. Yes, sir; I might say in that connection it was customary to issue intrastate rates without putting the I. C. C. number on them. Some roads in sending those to the agents elected to place the words "Not to be posted" on them. Other roads did not place that notation, and they were not posted, in the sense meant by the interstate-commerce law; that is——

Q. The passage that I read?—A. Yes.

Q. In your cross-examination you were asked whether, if you were the agent at Olean, you would be able to quote a combination of rates through to Norwood and Burlington, if the tariff was not filed with the Interstate Commerce Commission. Would an agent, or you as agent, if you were there, the agent of the Pennsylvania road at Olean, be any more apt to have such a tariff if it had been
10632 filed, or would the filing with the Interstate Commerce Commission make any difference with the practice, as to whether the agent at Olean would be likely to have that tariff or not?—A. Beyond Rochester?

Q. Beyond Rochester to Norwood.—A. He would not be likely to have it.

Q. That is, the fact that the tariff was filed or was not filed with the Interstate Commerce Commission would make no difference with that probability?—A. No, sir.

Mr. MILLER. There are one or two things that I may want to ask Mr. Zimmerman, but they require a little looking up, and I may want to recall him in the morning.

Mr. KELLOGG. All right.

Recross-examination by Mr. KELLOGG:

Q. Mr. Zimmerman, did you ever see a tariff marked "Not to be posted" before?—A. Yes, sir.

Q. Where?—A. I don't recall now, but I have seen them frequently.

Q. Where have you seen them frequently?—A. Oh, in my railroad work.

Q. Did your railroad compan[illegible] ever use one?—A. We did not use that notation.

Q. Then, what companies' tariffs did you ever see marked "Not to be posted?"—A. I can possibly bring you in some when I bring that other information, Mr. Kellogg.

Q. You can?—A. Yes, sir.

Q. All right. Please do so.—A. All right, sir.

10633 Q. Don't you know that the Michigan Central Railroad and the New York Central Railroad have an agent with the Interstate Commerce Commission who gets and sends them all tariffs that are filed?

Mr. MILLER. I object to that as immaterial.

A. State that again.

Q. Don't you know that the Michigan Central, the Lake Shore, and the New York Central have a man in the office of the Interstate Commerce Commission who sends them all tariffs that they are interested in?—A. Sends them all tariffs that they are interested in?

Q. Yes.—A. Why, no.

Q. Well, examines them all and keeps your companies posted as to the tariffs of other lines?—A. There is a man located there, but it would be impossible for him to examine them all.

Q. That is his business, isn't it?—A. Yes; but——

Q. He is there for that purpose?—A. He is there.

Q. To keep them posted as to the tariffs of other lines?—A. To the extent that he can.

Q. That is his business, isn't it?—A. Yes; that is his business.

By Mr. MILLER:

Q. The object of that is to know what rates your competitors are making for competitive traffic, is it not?—A. Yes, sir.

Mr. KELLOGG. You will bring those others tariffs in in the morning, will your please?

WITNESS. Please do not tie me down to the morning.

Mr. KELLOGG. Well, in the afternoon.

WITNESS. As soon as I can get them, if you please.

Mr. KELLOGG. Look them up before you come in.

10634 HENRY E. PIERPONT, recalled for further cross-examination, as follows:

By Mr. KELLOGG:

(Papers marked petitioner's Exhibits 932A to I.)

Q. Mr. Pierpont, I show you some correspondence between the auditor of the Interstate Commerce Commission and the freight traffic

officials of the Chicago, Milwaukee & St. Paul Railway, marked petitioner's Exhibits 932A to I, upon the subject of showing on the application sheet the tariffs made to apply to Chicago switching districts. Will you please examine that correspondence?

(Witness examines the letters.)

Mr. MILLER. Do you offer these documents in evidence?

Mr. KELLOGG. Yes; I offer in evidence these documents, this correspondence, as a part of the cross-examination of Mr. Pierpont.

Mr. MILLER. These documents may be regarded as proven, with the reservation that the defendants have the right to verify the copies. There are certain unproven copies of letters here, as I understand it, from the auditor of the Commission to some department of the railway, and those copies we are to have the right to verify, and if we find any errors in the copies, then we say we reserve the right to require the Government to make proof on that.

Mr. KELLOGG. Yes; that is entirely satisfactory.

Q. Now, Mr. Pierpont, your application sheet which I asked you about the other day, I. C. C. No. A6102, which was issued April 1, 1903, effective April 6, 1903, in making Chicago rates
10635 applicable to Whiting, did not contain the list of tariffs which would thus be made applicable to Whiting, did it?—A. It did not contain any list of tariffs, as I remember; no. It did not contain a list of tariffs at all.

Q. Then my question is correct, isn't it? It did not contain the list of tariffs?—A. It did not.

Q. Now, did you not after that correspondence, and in compliance with it, file Supplement 4, in which you gave a list of the tariffs which would thus be applicable to Whiting and other points, and stated "Rates authorized in above-described tariff will apply in connection with the following tariffs, supplements thereto, or subsequent issues thereof," and then follow a list of tariffs?

Mr. MILLER. I object to the question as double or triple, as containing too much, and on the ground that the tariff shows upon its face what it states. I have no objection to the witness reading from it.

Mr. KELLOGG. I intend to avoid putting in copies of the tariffs.

Mr. MILLER. I haven't any objection to the witness reading from it.

Mr. KELLOGG. All right.

Mr. MILLER. And I do not think I have any objection to his construing it under the request of counsel.

Q. I simply ask if you did not, in compliance with the letters, put in a supplement which showed the tariffs which would be effective under the previous application sheet?—A. With this caption as you read it here; yes, sir.

10636 Q. Yes; you did that in compliance with that correspondence, didn't you?—A. In compliance with the request from the auditor of the Interstate Commerce Commission.

Q. In view of that correspondence, Mr. Pierpont, and the correspondence which I showed you the other day, between the other lines of railroad, to wit, the Chicago & Alton and the Chicago, Burlington

& Quincy, where those companies were required to file amendments or supplements showing the tariffs made applicable to Whiting and other points, is it still your opinion that it was not the intention of the railroads to make a complete list and attach them to their tariffs?—A. It is. It is my opinion that it was not the intent, on the application sheets which I testified to the other day. It was the intent of our application sheet to cover all of the interstate tariffs as we could. We undertook to make it complete.

Q. Now, did not the Interstate Commerce Commission, in its correspondence with the Alton, also require them to make theirs complete?

Mr. MILLER. Does not the correspondence show, or the record?

Mr. KELLOGG. I think the correspondence shows that it required them to make it complete.

Mr. MILLER. Well, it shows what the fact is about that. I think I will object. This witness did not have anything to do with that correspondence, and I object. The correspondence ought to show.

Mr. KELLOGG. Mr. Miller, as I recollect, this witness testified that in his opinion I. C. C. No. 1203 was not intended
10637 to cover all of the tariffs made applicable to Whiting.

Q. Was that your testimony?—A. My testimony was that there was no connection, no caption, nothing to show what this list was, and in my opinion it was only a partial list of tariffs naming rates from Chicago.

Q. That was as I recollect your testimony.—A. There is a difference, if you will notice, between the way our list was published and this list.

Q. Let me show you the correspondence between the Interstate Commerce Commission and the Alton Railway, preceding the issue of I. C. C. No. 1203, in which the auditor said: "Your I. C. C. No. 981," which is the preceding number to 1203, "taking effect August 15, 1901, does not plainly show the rates to be charged as the law requires. I have to request, therefore, that the schedule be reissued as a supplement to the tariffs, showing the rates, or that reference be at least made to the I. C. C. numbers of such tariffs, so that the Commission may have ready access to the same;" and that after that correspondence, I call your attention to the fact that I. C. C. No. 1203 was issued, which contains a list of tariffs. Now, with that correspondence and that I. C. C. number before you, how can you say it was not intended to contain all the list of tariffs?

Mr. MARTYN. I think the witness's attention should also be called to the fact that nearly two years intervened between the correspondence and the new tariffs.

Q. Yes; but it should also be called to the fact that 981 preceded this, and that was what the Commission——A. It necessarily
10638 preceded that, for all of the tariffs are issued, of course, in numerical order. I can not testify as to the intent of the Chicago & Alton. As I understood the statement, when I was on

the stand here a few days ago, there was about a year and a half or two years intervened between the correspondence which you spoke of—I guess it is this correspondence here—and the reissuing of the C. & A. tariff; but I said that the C. & A. tariff, as it reads, does not carry any such information, to my way of thinking.

Q. But the C. & A. tariff as it reads does contain a list of tariffs which are applicable to Whiting, doesn't it?—A. It contains a list of tariffs and does not say what they are for or show the connection at all, and there is no cross-reference and no limitation, as I should interpret the tariff.

Q. Well, it says: "In connection with" at the head of the list, doesn't it?—A. No; not with any connection or with any reference to this at all. It says here G. F. D. 512, in connection with the Chicago and St. Louis Traffic Association. There is no connection whatever between that clause and this clause here, as I see it.

Q. Now wait a minute. Do you mean to say——

Mr. Miller. You mean the rate-naming clause above?

Witness. The rate-naming clause above and the list of tariffs. This "in connection with" refers simply to the issuing association, in that case the Chicago and St. Louis Traffic Association.

Q. Now wait a moment. The first tariff in that schedule is Tariff No. 24, naming class rates, which you testified about the other
10639 day, isn't it, Tariff No. 24?—A. I take it though—I don't know the connection there—512.

Q. 512?—A. Oh, yes; here is 24—yes; it is.

Q. That is the tariff which you testified the other day would be made applicable to Whiting in the absence of some lower commodity rate. Isn't that true?—A. Yes.

Q. Very well. Now that is a Chicago and St. Louis Traffic Association tariff, isn't it?—A. Yes; issued by them.

Q. And it is No. 512, isn't it?—A. C. & A. G. F. D. 512.

Q. Now "in connection with" means in connection with G. F. D. 512, Chicago and St. Louis Traffic Association Tariff No. 24, doesn't it?—A. I would not read it that way.

Q. How would you read it?—A. It means C. & A. G. F. D. 512, in connection with Chicago and St. Louis Traffic Association, No. of Tariff 24, I. C. C. No. 3, effective May 15.

Q. That is that the G. F. D. number of the tariff must be taken in connection with the tariff number of the tariff?

Mr. Durand. The association number.

A. That is simply as a reference mark to the Chicago & Alton G. F. D.

Q. What does "in connection with" mean—in connection with what?—A. In connection with the Chicago and St. Louis Traffic Association.

Q. Well, what is in connection with it?—A. The rates, the tariff, C. & A. G. F. D., such a number in connection with the Chicago and St. Louis Traffic Association. That is the description of the tariff. It carries two references. It carries the Chicago & Alton G. F. D.

number and it carries the Chicago and St. Louis Traffic Asso-
10640 ciation. Then it carries also the G. F. D. number or the I. C. C. number.

Q. I understand, then, you mean that the G. F. D. number must be taken in connection with the tariff number on the same tariff, do you? That is what it means, is it?—A. I say that it is a reference mark, that C. & A. G. F. D., in connection with the Chicago and St. Louis Traffic Association.

Q. Well, I am very glad to get your explanation, Mr. Pierpont. It is exceedingly intelligent. You were requested to look up certain State rates that you used on the Milwaukee road, as applicable for interstate shipments. Have you been able to find any?—A. I did not think that I had stated that. I told you that it would be extremely hard to connect up any shipments with tariffs. I have not done so.

Redirect examination by Mr. MILLER:

Mr. MILLER. We would like the Government to produce the letter from Mr. Keeley, the general freight agent of the St. Paul Railway, to Auditor Smith, of the Interstate Commerce Commission, on April 17, 1903.

Mr. KELLOGG. Isn't it in here?

Mr. MILLER. No; I don't see it there.

Mr. KELLOGG. If you have got a copy of it, you may substitute it. I did not read the correspondence carefully.

Mr. MILLER. I do not see it referred to there. It is on the same subject.

Mr. KELLOGG. We telegraphed for this, and I have not had any chance to examine the files of the Commission at all. We tele-
10641 graphed for all the correspondence. Mr. Crossland, have you produced a copy of that letter?

Mr. CROSSLAND. No.

Mr. KELLOGG. If you have the letter, Mr. Miller, I have no objection.

Q. Is this a copy of a portion of the correspondence relating to this subject-matter, between your railroad and the auditor of the Interstate Commerce Commission, which you produce from the files of your company?—A. Yes, sir; it is. When I was requested to look it up and I told Mr. Kellogg I would do so, I found this letter, this copy, with the correspondence.

Q. This is your office copy?—A. This is the office copy. It relates to the application sheets from Chicago. I do not think it refers to the same I. C. C., possibly.

Q. It refers to the same subject-matter?—A. To the same subject-matter. It was all together in our files.

Mr. MILLER. I offer this letter in evidence.

Mr. KELLOGG. It is not objected to on the ground that it is a copy, and we admit that it is a true copy, subject to our right to verify it; but it does not seem to refer to the same tariffs. It is objected to, therefore, as immaterial.

(The letter was marked "Defendant's Exhibit 191.")

Mr. MILLER. I also offer in evidence the letter from the auditor of the Interstate Commerce Commission to Mr. Keeley, general freight agent of the St. Paul Railway, of date April 22, 1903, purporting to be an answer to the letter of Mr. Keeley of April 17, offered above. That is the original letter, Mr. Kellogg.

(The letter was marked "Defendant's Exhibit 192.")

10642 Mr. KELLOGG. That is evidently in relation to another tariff, Mr. Miller.

Mr. MILLER. I know, but it on this same subject.

Mr. KELLOGG. It is evidently another tariff.

Mr. MILLER. It is in answer to the letter I last offered.

Mr. KELLOGG. There is no objection to the letter at all, except that it does not refer to the tariffs under consideration in this case, but to other tariffs where a like question was under discussion.

Mr. MILLER. Well, specifically, the tariff mentioned in these two letters is G. F. D. 33284, I. C. C. No. A5962. That may be marked and copied into the record and returned, the copy taking the place of the original.

Defendants' Exhibit 192, here referred to, is as follows:

J. M. Smith, auditor. A34163.

Interstate Commerce Commission. 11/37

Office of the Auditor,

WASHINGTON, *April 22, 1903.*

Mr. E. S. KEELEY, G. F. A.,
Chicago, Milwaukee & St. Paul Railway,
Chicago, Ill.

DEAR SIR: Your letter of April 17th (G. L. W.) in reply to mine of February 13th, 1903, relative to G. F. D. 33284, I. C. C. No. A5962.

From your letter I understand that all rates to or from Chicago, Ill., published in tariffs of your company, or published by other companies in connection with your line, will apply to

10643 the points enumerated in above-numbered tariff. This being so, it will at once be seen that the application of all such tariffs is extended by your I. C. C. No. A5962. It would be laborious, indeed, to undertake to locate all tariffs so affected without being advised of their I. C. C. numbers, the consequence being that proper amendment thereof can not be made and on their face they would apply only as originally published.

Replying to the closing paragraph of your letter would say, that I can not agree with you that the amendment requested would be valueless within a week, owing to contsant changes. All that is necessary is to publish the list of tariffs now affected, making the amendment read: "For rates applicable between points indicated in tariff see tariffs listed below, or amendments or subsequent issues thereof."

The original tariffs being thus properly specified, it will be a simple matter to trace the rates through subsequent issues.

Respectfully, yours,

J. M. SMITH,
Auditor.

Q. A5962 is an application sheet, isn't it?—A. I take it, as I remember this, it refers to Chicago application sheet, doesn't it?

Mr. KELLOGG. It was not the one under consideration.

WITNESS (reading). "From your letter I understand that all rates to or from Chicago——"

Mr. KELLOGG. It does not refer to the particular tariffs that we have under consideration.

A. No; it does not seem to be the same I. C. C. number. It
10644 must have been a previous issue.

Q. Now, I would like to ask you, Mr. Pierpont, from your experience as a traffic and rate man, how much, if any, information to a shipper the notation upon Supplement No. 4 to I. C. C. No. A6102, which counsel for the Government asked you about, would give, or, in other words, how much the shipper would be saved the necessity of depending upon the quotation of rates from the rate clerk or agent of the railway company? The notation is as follows: "Rates authorized in above-described tariff will apply in connection with the following tariffs, supplements thereto or subsequent issues thereof: C. M. & St. P. I. C. C. Nos. A38–435–1324–1675–2020–2167–2408–2551–2672–2775–3103–3217–3415–3871–3873–3874–3918–4296–4565–4566–4611–4616–4624–4762–5062–5526–5798–5804–5849–5948–6003–6004–6014–6045–6049–6189–6222–6227–6245–6250–6283–6308–6321–6353–6447–6528–6546–6659–6697–6703–6714–6733–6785–6794–6832–6840–6913–6930–6937–6948–6986–6995–6998. Attach to and make part of above-named tariff."—A. I do not think that the information would be of any benefit to the shipper, except as he might—he would have to inquire of the rate man or the railroad representative as to the rate.

Q. I now show you a paper which purports to be a tariff of your railway company, G. F. D. No. 48192, I. C. C. No. A8243, issued April 5, 1905, effective April 10, 1905, and to be a joint tariff on classes and commodities, with certain exceptions, between stations on the Chicago, Milwaukee & St. Paul Railway and stations on certain other railways listed, and suburban stations or points in
10645 Chicago, in Illinois, and Indiana, including Whiting, and applying the same rates as apply between Chicago and stations on the lines referred to, subject to a minimum stated, and I ask you whether that is an application sheet tariff that was issued and filed by your company?—A. It was.

Q. Of the same kind as the 6102, is it?—A. It has the same general purpose, an application sheet applying Chicago rates from suburban points.

Q. Do you know whether 6102 was cancelled by a subsequent issue?—A. 6102 was cancelled by another tariff that was issued prior to this one, as I recall it.

Q. And this tariff canceled that.—A. Cancelled the other one.

Q. Cancelled the one that cancelled 6102?—A. Yes, sir; this is the second removed from 6102, as I remember it.

Q. It is an application sheet of your company?—A. Yes, sir.

Mr. KELLOGG. When was this effective?

Mr. MILLER. April 10, 1905.

Mr. DURAND. This is the second successor of this tariff sheet.

Q. I call your attention to the notation thereon with respect to tariffs corresponding with or taking the place of the notation on Supplement 4 to 6102, to which Mr. Kellogg called your attention, and ask that this notation appear in the record as follows: "Rates authorized herein will apply in connection with tariffs covering rates to or from Chicago on state or interstate traffic, including the following: C. M. & St. P. I. C. C. Nos. A, or subsequent issues
10646 thereof," followed by about 90 numbers. What would you say as to whether that tariff by its terms did or did not confine the application of the tariffs there listed?

Mr. KELLOGG. That is objected to. The tariff is the best evidence. That is, the part he read from is the best evidence. I do not require the whole tariff to be put in.

A. It did not.

Q. What would you say as to whether that left it open for the application of any tariff in force?—A. It did, without any question in my mind.

Q. Including any intrastate tariff; tariff between points in a State?—A. Yes.

Q. Was that tariff filed with the Interstate Commerce Commission?—A. This tariff was; yes, sir.

Q. Do you know of any complaint on the part of the Interstate Commerce Commission of that application sheet tariff?—A. No; I do not; not at the time.

Mr. KELLOGG. There has been since, hasn't there?

WITNESS. No; except I think that after the passage of the Hepburn law the new rules of the commission provided some rule which made it necessary for us to change this tariff; when they issued their tariff circular 15A, I think it was.

Mr. KELLOGG. That means that you disregarded the instructions in these letters again, and they again called your attention to it?

Mr. MILLER. They did not call their attention to it.

WITNESS. No; it does not, Mr. Kellogg.

Mr. KELLOGG. These letters required you to list all the tariffs, didn't they?

10647 Mr. MILLER. I object to your cross-examining until I get through.

Mr. KELLOGG. I beg your pardon, sir; I thought you were through.

Q. Now, calling your attention to the notation on Supplement 4 to I. C. C. A6102 that Mr. Kellogg asked you about, does that by its terms limit the application to the list of tariffs thereon given? I mean by that, does it confine it to any purported list, or confine it only to I. C. C. numbers, or does it by its terms confine it to the tariffs there listed so as to exclude an intrastate tariff or a tariff within a State?

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. Well, so far as our road is concerned, I do not recall that we had any intrastate rate that would be effective. We have not a great number of miles in Illinois, only operating in northern Illinois; but from the wording of the tariff I would not say that it would exclude the use of a State rate.

Q. If there were such rates?—A. I do not recall any with our company.

Q. I say, if there were such rates?—A. If there were such rates.

Q. Then it would not exclude them?—A. Because the only list shown there are I. C. C. numbers, which were all that were requested.

10648 F. P. EYMAN, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. What is your full name?—A. Frank P. Eyman.

Q. Where do you live?—A. Chicago.

Q. You are with the Chicago & Northwestern Railroad?—A. Yes, sir.

Q. In what position?—A. Assistant general freight agent.

Q. How long have you held that position?—A. Ten years.

Q. Prior to that time what was your occupation?—A. I was general agent in Chicago, agent and contracting agent in Milwaukee, traveling freight agent throughout the territory.

Q. For how long a period in those different capacities?—A. I have been with the Northwestern road 29 years in the different capacities I have named.

Q. How much of that time in Chicago?—A. Since 1896; that is, 12 years.

Q. You have had to do, all of that time, with freight matters?—A. Yes, sir.

Q. You are familiar with tariffs?—A. Somewhat familiar with tariffs, yes, sir.

Q. You have had to use and handle tariffs during all of your railroad experience, I suppose?—A. Yes, sir.

Q. Going back now to the time prior to the enactment of the present interstate commerce law, commonly known as the Hepburn law, or say prior to October 1, 1905, what was the custom of
10649 railroads with regard to filing State tariffs; that is, tariffs naming rates only between points in the same State?—A. They were not generally filed with the Interstate Commerce

Commission previous to the date of the order issued by the Commission on September 29, 1906, to the effect that State tariffs must be filed with the Interstate Commerce Commission. Previous to that time the tariffs were not generally filed with the Interstate Commerce Commission. Now, when I say State tariffs, I mean tariffs that did not contain any rates excepting those that applied locally between points within a State. Of course, if the tariff contained interstate rates as well as State rates, it was given an I. C. C. number and filed.

Mr. KELLOGG. This testimony is taken subject to the same objections as the others, so I will not repeat the objections.

Mr. MILLER. They were filed for the purpose of those interstate rates?

WITNESS. Yes, sir.

Mr. MILLER. Because of that?

WITNESS. Yes, sir.

Q. What was the custom of railroads, during the time I have previously mentioned, with regard to the use of the sum of the locals, where that was less than a through rate, or where there was no through rate?—A. It was the general custom to use the combination of locals wherever they might make less. Now, I say the general custom; I will add to that and say it was the universal custom to use the combination of locals, of published rates, whether State or interstate, whether filed with the Commission or otherwise,
10650 where the combination of those published rates up to and from basing points made less than a through class rate or a through commodity rate as an interstate rate.

Q. You gave the shipper the benefit of the lowest combination that could be made?—A. Yes, sir; in all cases, as I say, where the combination on basing points made less than the through rate.

Q. And that use of unfiled State rates was regardless of the fact that the shipment came from another State or was going to another State, was it?—A. Yes, sir.

Q. You have been familiar, I suppose, for a good many years with what is commonly known as the Chicago switching district?—A. Yes, sir; I want to say, in addition to what I have said about the use of the local rates, that it was the custom of the railroads to do that universally. Now, that was not done for one firm, or another firm, or some particular firm, but those rates were known by everybody, they were used by everybody, and quoted to everybody, every shipper.

Q. That is to say, you used the combination of the locals?—A. The shippers used the combination of locals, and the railroads quoted the combination of locals. Every shipper knew of those rates. They used those rates, and they were open to everybody, to every shipper.

Q. You did that with regard to all shippers and as to all classes of freight?—A. Yes, sir.

Mr. KELLOGG. There never was a secret rate, then?

WITNESS. I do not say that, Mr. Kellogg. I say that, so far as the practice that we are talking about now was concerned, those
10651 were published rates, and those were used as combinations of locals. They were open to every shipper, known to every shipper, and used by every shipper.

Mr. KELLOGG. You mean those rates were so used?

Mr. MARTYN. I think the cross-examination had better wait until we are through.

Mr. KELLOGG. All right; go ahead.

Q. With regard to the Chicago switching district, you have been familiar with that since 1896?—A. Yes, sir.

Q. What was the custom, if you know, of the railroads leading out of Chicago, say, at that time and for a few years thereafter, with regard to the application of Chicago rates to points in the Chicago switching district?—A. It was the custom to apply the Chicago rates with a minimum. So far as the Chicago & Northwestern road is concerned, I believe (I am quoting this from memory now, but I believe I am right) since 1898 we have made an application of Chicago rates, by an application sheet, to and from all of the Chicago suburban points, called the Chicago switching district. That application sheet was published, I believe, first in 1898, and that provided for the application of Chicago rates to and from the Chicago district, naming the point, with a minimum of so much on class rates and so much on commodity rates.

Q. You are familiar in a general way with what the Chicago switching district includes?—A. Yes, sir.

Q. As you understand it, does it include certain towns in Indiana?—A. It included East Chicago, Indiana Harbor, Whiting——

Q. Hammond?—A. Hammond, Indiana; yes, sir.

Q. Was it the custom in the same manner to apply Chicago
10652 rates to those towns as to other points in the switching district?—A. Yes, sir.

Q. What was the purpose of the application of the Chicago rates to these outlying industrial points?—A. To apply even rates to a large commercial community, putting all of these industries on a parity with industries located at other points in the switching limits of the city of Chicago, the idea being that here is a large district in which there is a large line of manufacturing and in which the conditions are the same practically. Now, the idea was to make a blanket application of the Chicago rate to and from all these industries and industrial points located within that wide district, having an expanse of, say, 25 to 28 miles north and south—well, that is a little—yes, I don't think that is too far, and about 15 to 18 miles in width, what was known as the Chicago switching district, in which it was the intention of the roads, by these application sheets, to apply Chicago rates to and from the industries located within that prescribed territory.

Q. Did that also have the effect of giving to the shippers at each of these points the advantage of competition of rates out of Chicago over competing roads?—A. That was the idea, and that, I believe, was the result accomplished.

Q. They then got equal rates and the advantage of competitive rates?—A. Yes, sir; under that application a man located at Hammond, Indiana, making a shipment to Clinton, Iowa, on the Chicago & Northwestern road, enjoyed the same rate from
10653 Hammond, Indiana, as if he had been located on the rails on the Chicago & Northwestern road.

Q. As you understand it, then, it was the purpose, as an example, to apply to Whiting or Hammond, in Indiana, the same rates as prevailed from South Chicago or some point that happened to be west of the state line?—A. There was no state line drawn. There was not any imaginary line across the State in which the application would not be made, but the whole situation was covered in a blanket application, the whole territory; and the fact that one man was at South Chicago and another man across the line in Indiana made no difference so far as the application of the rate was concerned. The minimum under which the application was made was the same at South Chicago as it was at East Chicago, Indiana, or Hammond, Indiana.

Q. And there was no intention on the part of the railroads, as you understand it, to require the shippers at Hammond or Whiting or those points in Indiana to pay higher rates than the shippers in towns situated in Illinois?—A. No, no.

Q. Within the Chicago switching district, I mean?—A. Yes.

Q. Mr. Eyman, I show you a copy of the Chicago & St. Louis Traffic Association Tariff No. 24, I. C. C. No. 3; also two copies of document known as the Railway and Warehouse Commissioners' Revised Schedule of Reasonable Maximum Rates or Charges; one in force July 1, 1895, and the other in force January 1, 1900. I also show you a copy of Chicago & Alton Railway Company Tariff I. C. C.
10654 No. 981, and copy of the same railroad's Tariff I. C. C. No. 1203; and a copy of the same railroad's Tariff I. C. C. No. 1407; also copy of the same railway company's Tariff G. F. D. No. 10525, effective August 15, 1903, filed with the Interstate Commerce Commission December 21, 1905. I also show you a copy of Chicago & Alton Railway Company's Tariff, Special G. F. D. No. A209, the same being petitioner's Exhibit 552, and Special G. F. D. No. A447, the same being petitioner's Exhibit 553. I ask you to examine these documents and state whether or not you could from these documents, in the years 1903–4, according to the custom and practice of railroads at that time, have named a rate on petroleum and its products, in carloads, from Whiting, Indiana, to East St. Louis, Illinois, and if so, what you would have named as the lawful rate?

Mr. KELLOGG. Let it be understood that all this is taken subject to the same objections that I made to the other, Mr. Martyn. Is that correct?

Mr. MARTYN. Yes; subject to the same objection.

A. I would have named a rate of 6 cents per hundred on petroleum and its products, carloads, in tank cars, from Whiting, Indiana, to East St. Louis, to Granite City and Alton, Illinois.

Q. I call your attention to Chicago & St. Louis Traffic Association I. C. C. No. 3, Tariff 24, and the two copies of the Illinois Railway and Warehouse Commissioners' Classification to which I previously called your attention. I also call your attention to a tariff of the Chicago, Burlington & Quincy Railroad, being its I. C. C.
10655 No. 4721, effective December 28, 1903. I also call your attention to Amendment No. 3½ to the last-named tariff, filed with the Interstate Commerce Commission April 28, 1904. I likewise call your attention to a tariff of the same railroad, being its I. C. C. No. 4234, otherwise identified as defendants' Exhibit 158A; also to Amendment 2 to the last-named tariff, being defendants' Exhibit 158B, effective February 8, 1904. I call your attention to the fact that this last-named supplement lists among the tariffs as naming rates between Chicago and East St. Louis, Chicago, Burlington & Quincy F. Tariff No. 1059, and I call your attention to petitioner's Exhibit 573, the last-named tariff being C., B. & Q. G. F. O. No. 1059. I likewise call your attention to a tariff of the Chicago, Burlington & Quincy Railroad, effective January 10, 1896, filed with the Interstate Commerce Commission on April 4, 1904, and I call your attention to the eighth page of this tariff and to the last entry thereon, with regard to tariff to East St. Louis, and the reference to "See special tariff." I ask you to examine these documents and state whether or not, from these documents and in accordance with the custom of railroads at that time, you could, during the year 1904, have named a rate on petroleum and its products, in carloads, from Whiting to East St. Louis, and if so, what you would have named as the lawful rate.

Mr. KELLOGG. That is subject to the same objection, I suppose?

A. I would have named, in accordance with C., B. & Q. G. F. O.
1059, special tariff on coal oil, petroleum, and its products, from Chicago to East St. Louis, a rate of 6 cents per 100 pounds.
10656 Q. You would have named that as the rate from Whiting to East St. Louis?—A. Yes, sir; because that tariff is in connection with the application sheet which applies Chicago rates from Whiting, with a minimum of 6 cents.

Q. I call your attention to petitioner's Exhibits 592 and 593, the first being Missouri Pacific Railway Company's Tariff I. C. C. 535, effective July 16, 1896, and the second being the same railway company's Tariff I. C. C. 6848, purporting to cancel the first-mentioned tariff. I also call your attention to the same railway company's Tariff I. C. C. No. 1744, effective August 10, 1897, and ask you to assume that this tariff, or subsequent issues of like character naming the same rate, was in effect during the years 1903–4. I ask you to examine those documents and state whether or not, in the years 1903–4, you could have named a rate on petroleum and its products

in carloads from St. Louis, Missouri, to Alexandria, Louisiana, and, if so, what you would have named as the lawful rate.

Mr. KELLOGG. Same objection.

A. What you ask me to do now is to quote a rate that would have been applicable from Whiting, Indiana, to Alexandria, Louisiana?

Q. No; from St. Louis, Missouri, to Alexandria, Louisiana.—A. I would have quoted a rate of 25 cents per hundred pounds.

10657 Q. I show you copy of petitioner's Exhibit 596, the same being Missouri Pacific Railway Company Tariff I. C. C. No. 830. I also show you a copy of petitioner's Exhibit 597, the same being Morgan's Louisiana & Texas Railroad & Steamship Company Tariff Local Special No. 2250. I also show you a copy of the last-named railway company's Tariff No. 2234. I also show you a copy of the tariff entitled Through Freight Tariff No. 16F, bearing I. C. C. No. 168, effective October 1, 1902, and ask you to assume that all of the tariffs now shown you or subsequent issues bearing the same rates were in effect during the years 1903 and 1904. I ask you if, from an examination of these documents, in the years 1903 and 1904 you could have named rates on petroleum and its products, in carloads, from St. Louis, Missouri, to the several points named in the tariffs marked petitioner's Exhibits 597 and 598, and, if so, what you would have quoted as the lawful rate? It will be sufficient, Mr. Eyman, if you confine your answer to one point mentioned or shown as the point of destination on each of the tariffs marked petitioner's Exhibits 597 and 598.

Mr. KELLOGG. Same objection.

A. I would have quoted a rate of 40 cents per hundred pounds from St. Louis, Missouri, to Crowley, Louisiana.

Q. In box cars or in tank cars?—A. In box cars. In tank cars 34 cents per hundred pounds. To the other points, I would quote 33 cents to Lafayette, in either tank or box cars; 31 cents to St. Martinville and New Iberia, also to Morgan City and Franklin, and to Schriever I would quote 29 cents per 100 pounds.

10658 Q. How do you ascertain these rates?—A. Combination of local rates on Alexandria, Louisiana.

Q. And you quote those as being less than the through rates mentioned in the Through Freight Tariff No. 16F?—A. Yes; those are commodity rates, less than the through class rate.

Mr. KELLOGG. Do you mean you would do that then or you would do it now?

WITNESS. I would at that time. Under the ruling of the Interstate Commerce Commission at the present time the through rate must govern whether it is a class rate or a commodity rate, or whether it is higher or lower than the combination of the locals.

Mr. KELLOGG. The through rate is a combination rate, isn't it?

WITNESS. Well, that would not matter in my answer, so far as that is concerned.

Mr. MARTYN. That is all. You may cross-examine.

Cross-examination by Mr. KELLOGG:

Q. That is, you mean if you were the agent at St. Louis you would quote the 15-cent rate from St. Louis to Alexandria and those unpublished and unfiled rates beyond?—A. That means that if I had been the man quoting the rate on oil or any other commodity in 1903 or 1904, I would have figured the lowest combination of a legal rate that I could get and quote that, because if I did not I would not handle the business.

10659 Q. And to make that lowest combination of legal rates you would take those unpublished rates from Alexandria and those unfiled rates?—A. No; I don't understand they are unpublished rates. Those rates are all given a G. F. D. number, and therefore they must be published rates.

Q. And you assume, then, that they were regularly published rates?—A. Yes, sir.

Q. And if they were not regularly published rates your answer would not include them, would it?—A. Well, I can not assume anything of the kind because the tariff was put up in such shape——

Q. I am asking you if they were not published.—A. If they were not published they are not rates. There is no such thing as an unpublished rate. There might be a figure quoted, but that would not be a rate.

Q. But if a tariff is not posted, you understand it not to be a published rate?—A. No; I don't understand that.

Q. What do you mean by publishing the rates?—A. I mean that it is a rate that is quoted openly by the railroad and known to be by the shipper a rate that is in effect.

Q. That is, you mean by publishing that it is?—A. I don't mean that you have to—in the days before the Interstate Commerce Commission issued its order as to the size and manner in which tariffs should be printed, tariffs were hektographed and all that sort of thing, and sometimes typewritten.

Q. Now, please confine yourself to the question. What do you mean by being published?—A. I mean that that tariff shall be in the records of the company and posted at the office so that

10660 anybody who inquires shall know what that rate is.

Q. In the records of the office at St. Louis where you quote the rate?—A. Yes, sir.

Q. Now, suppose it was not in the records of the office at St. Louis where you quote the rate, what would you quote as——A. Well, I can't suppose that with any tariff.

Q. But I am asking you to suppose it was not in the office at St. Louis, because Mr. Stith testified that it was not.

Mr. MARTYN. I dispute that statement.

Mr. KELLOGG. He said he didn't know whether it was even published or not.

Mr. MARTYN. That was not so stated, as I understand.

Mr. KELLOGG. Yes; it was so stated by Mr. Stith.

A. It would not matter——

Q. Now, I am asking you to assume that it was not in the hands of the agent of the Missouri Pacific at St. Louis.—A. I don't think it would matter as to the use of the tariff whether it was in the hands of the agent at East St. Louis or not; but if it was a published tariff——

Q. Now wait a moment.

Mr. MARTYN. Let him answer.

Q. If the agent at St. Louis did not have that tariff how could he quote it?—A. Somebody else might have it and quote it. The agent at East St. Louis would, of course, have a copy of that tariff.

Q. How do you know he would?—A. Because the tariff applies from that station.

Q. Does it apply from St. Louis?—A. Well, either East
10661 St. Louis or St. Louis.

Q. Does it?—A. Well, now——

Q. Does the tariff apply from St. Louis?—A. Yes, sir; from St. Louis.

Q. I am talking about these [pointing to papers].—A. Oh, I mean this tariff.

Mr. MILLER. I submit to the examiner that the witness ought to be permitted to complete his answer without interruption.

The EXAMINER. Yes; I don't think you ought to cut him off, Mr. Kellogg.

WITNESS. The tariff that applied from St. Louis to Alexandria was undoubtedly on file——

Q. I am not talking about that tariff at all. If you will just pay attention to what I say.

Mr. MILLER. If the counsel will permit the witness to answer——

Q. If you were the agent at East St. Louis you would quote that 15-cent rate on the Missouri Pacific road from St. Louis or East St. Louis to Alexandria, wouldn't you?—A. Yes, sir.

Q. Now, beyond Alexandria there were rates made by the Southern Pacific, we will call it for short. It is Morgan's Louisiana & Texas Railroad and Steamship Company and the Louisiana & Western Railroad Company. Assume it to be the Southern Pacific. Beyond that point there were rates made in Louisiana from Alexandria to various places, were there not?—A. According to these tariffs; yes, sir.

Q. Now, I am talking about those tariffs.—A. Yes, sir.
10662 Q. Assume that those tariffs made by the Southern Pacific were not in the hands of the agent of the Missouri Pacific at St. Louis, would you quote them to the shipper?—A. I would, most assuredly, if I knew the rate was in effect. I would quote them whether they were on file. How does a man know about the application of rates until he makes inquiry?

Q. There is no evidence that these were in the hands of the Missouri Pacific; in fact, the evidence is that they were not. Now, how would you quote a rate——A. If they were local State rates they probably were not in the hands of the Missouri Pacific.

Q. Very well.—A. Now, then, it would be up to the Missouri Pacific Railway to find out whether there was a combination of locals, either State or interstate rates, which would be less than their through published rate, and if that were true, under the practices that were universal at that time, they would quote those rates.

Q. Very well. Now, let us see about that. If a shipper, who did not know about these rates, went to the agent at East St. Louis or St. Louis, how would he find out about this combination of rates that the agent didn't have?—A. Why, every shipper would have the same information that any other shipper would have.

Q. How do you know?—A. How would I know?

Q. Yes.—A. Well, if he didn't it was his own fault.

Q. How do you know that?—A. It would be his own fault. Every shipper had a right to ask for the lowest rate that was
10663 possible to figure on a shipment. Now, if he did not do it, it was his own fault and not the fault of somebody else who did do that.

Q. Now, if this rate was put in at the request of the Standard Oil, you assume that every other shipper could have the same rate, do you?—A. Yes, sir; I assume that if that was a published tariff rate from Alexandria to a point in Louisiana every shipper of oil, no matter who he was, would be privileged to use that same rate, and no doubt did use the same rate if there were any shipments of oil.

Q. You don't know anything about it, do you?—A. No; I say I assume that.

Q. Now, what do you mean by the Southern Pacific published those local tariffs—what do you mean by that?—A. I didn't say the Missouri Pacific. I was talking about the——

Q. I said the Southern Pacific; the Southern Pacific publishing the local tariffs from Alexandria on.—A. Why, their road publishes local tariffs from local stations on their road.

Q. How would they publish them?—A. How would they publish them?

Q. Yes.—A. Either by printing or hektographing them.

Q. Well, that was done. Is that what you call publication?—A. Yes, sir; that is a published tariff.

Q. That is a published tariff?—A. Yes.

Q. Publication didn't mean posting them in the stations of anything of the kind, I suppose?—A. It didn't in those days.

Q. It did not?—A. It meant that the local State tariffs were posted at the point from which the shipment would move
10664 and another copy posted at the point where the shipment was destined, and then they were subject to inspection or examination, and any man who comes up and wants to know what the rates are from a point, say, on the Missouri Pacific road to another point locally or within the State on the Missouri Pacific road would have those rates quoted, no doubt.

Q. Now, you say they would be given to the agent at the point of origin and the point of destination. Is that correct?—A. That would be necessary; yes, sir.

Q. Now, that would be at Alexandria and Crowley and the other various places in Louisiana, wouldn't it?—A. Yes, sir.

Q. It would not be at St. Louis, would it?—A. No, sir; it would not necessarily be at St. Louis.

Q. So that the agent at St. Louis would have to guess at what the rate was below Alexandria to quote that rate, wouldn't he?—A. Well, that of course——

Q. How would he know about it?—A. How would an agent down at Boston know what the rate is from Boston to Clinton, Iowa?

Q. He wouldn't know if it was carried like this.

Mr. MILLER. He wouldn't any more if it was filed.

Q. You say it was the universal custom. Counsel asked you if it was the custom prior to October 1, 1905.—A. Yes, sir.

Q. As I understand you, you say it was the custom prior to 1906, or which is it?—A. No; I said it was not the custom to file State tariffs until after the Interstate Commerce Commission issued their order. Now you talk about an order. That was not an order. They issued an order on September 29, 1906, in Circular No. 4A, in
10665 which they say that all State tariffs that apply on interstate traffic must be filed with the Interstate Commerce Commission. That was the order.

Q. No prior to that.—A. Now, in issuing that order they recognized the fact——

Q. Never mind arguing about that order.

Mr. MILLER. I submit the witness has a right to answer the question.

Q. Now, if you will answer my questions——A. I will be glad to answer your questions.

Q. And not be so anxious to argue the case.

Mr. MILLER. I ask the counsel for the Government to permit the witness to answer the questions.

Mr. KELLOGG. Yes, sir; I will.

Q. Now, you say that prior to September 29, 1906, it was the universal custom of the railways——A. No, I don't say so. I said in filing tariffs. Now, it was the universal custom in 1904 or 1903 to quote the combination of locals wherever that combination of locals made less than the through rates, whether that combination of locals was a compilation of interstate rates, or of the interstate rate plus a local State rate, whether it was two class rates, or whether it was a class rate made up to one point and a commodity rate from that point, or whether it was a commodity rate at both ends of the line less than the class rate, it was the universal custom at that time to quote that combination of locals in lieu of the through rate if that combination of locals made less than the through rate.

Q. How long did that custom exist, that was the question I asked you.—A. Ever since I can remember.

10666 Q. Down to what time?—A. Down to 1905, along in there.

Q. Down to what date?—A. Well, down to the time of the Elkins bill.

Q. Now what date was that?—A. Well, that was probably nineteen hundred—I don't know; 1904 or 1905 was about the time the roads began to get away from the——

Q. The Elkins bill was in 1903, wasn't it?—A. I say I don't know; but even after that tariffs were made——

Q. Now let us get that date. You say down to the time of the Elkins bill. Is that correct or not?—A. Let me put it this way——

Q. No; now answer my question.

Mr. MILLER. Put it in your own way, Mr. Eyman.

Q. You said down to the Elkins bill, didn't you?

Mr. MILLER. Answer the question.

A. I will put it this way: That previous to the passage of the Hepburn bill—now leave it just like that—it was the custom, the general custom, of railroads to quote the combination of locals where the combination of locals made less than the through rate.

Q. Now, when was that?—A. August 28, 1906.

Q. Now, you have got that settled, have you—that previous to that time it was the universal custom to quote——A. I say the general custom.

Q. The general custom?—A. Yes.

Q. Now, did your road do that?—A. Yes, sir.

Q. Down to August 28, 1906?—A. Well, I don't say that it was exactly that date, but it was the custom of the North-

10667 western Road, as well as of every other road, including the Chicago Great Western Road, to quote the combination of locals when less than the through rate.

Q. Now, name a case where the Chicago & Northwestern Railroad——A. I will name one.

The EXAMINER. Wait.

Q. Now wait until I ask you the question.—A. All right.

Q. Name a case where the Chicago & Northwestern Railroad, prior to August 28, 1906, used an unpublished State rate, and unfiled with the Commission, for the purpose of making a through interstate shipment.—A. Now, let me state that in a little different way. Previous to August 28, 1906, there were through class rates from all the Central Freight Association territory and trunk line territory to points in the Fox River territory, say, in Wisconsin. There were also rates up to Milwaukee and up to Manitowoc. The combination of those rates via Milwaukee and Manitowoc plus the State distance tariff rate or State terminal rates to the point in the Fox River territory made less than the through class rates, and the shipments were all made from the Central Freight Association territory in connection with all Wisconsin lines into those points on the basis of the combination on Manitowoc. Now, in order to obviate the fact that the gateway via Manitowoc made less on that combination of locals than by some other

gateway, we were forced to put in a line of proportional rates from Milwaukee to that same territory, making the same rate from Milwaukee as a proportional rate as was made by the local State rate from Manitowoc to these same points, equalizing the Mil-
10668 waukee gateway. Those proportional rates are in effect to-day.

Q. And those proportional rates were filed with the Interstate Commerce Commisison?—A. Those proportional rates were filed with the Interstate Commerce Commission, but——

Q. And it was on those proportional rates you made the shipments, wasn't it?—A. But wait, Mr. Kellogg; the State rate from Manitowoc to Fox River territory was not filed with the Interstate Commerce Commission. Now, I will give you another instance.

Q. Now wait. Don't give me any more till we finish up this one.

Mr. MILLER. That was filed with the Railroad and Warehouse Commission of Wisconsin?

WITNESS. Yes, sir.

Q. The shipments you refer to from Central Freight Association territory to Fox River district were made on those proportional rates, weren't they?—A. No, sir; oh, no. The shipments were moved via Manitowoc on combinations of the locals to final destination.

Q. And were they the same as the proportional rates?—A. The proportional rates were the same as those. Now you are putting the cart before the horse, because we put in the proportional rates after equalizing the local rates.

Q. And those proportional rates were filed with the Interstate Commerce Commission?—A. Yes, sir.

Q. And the proportional rates were the same as the sums of the locals, weren't they?—A. The proportional—no.

Q. Were they greater or less?—A. Let me answer that. You mix this up. Let me make it clear. The proportional rates
10669 were the same as the combination of local rates via another gateway, not the same as the combination of local rates via Milwaukee.

Q. Which way did you ship?—A. Via Manitowoc, via Milwaukee, via Green Bay, and via any other old gateway, but the combination of locals via Milwaukee would not, without these proportional rates, have equalized the combination of locals via Manitowoc. Therefore, there came the necessity of putting in these proportional rates from Milwaukee so as to equalize the combination of rates via Manitowoc.

Q. Which way did you ship?—A. Both ways.

Q. Then, you did ship from Manitowoc——A. We didn't ship. We carried the stuff.

Q. You carried it, then, from Manitowoc to what place in the Fox River country?—A. All the territory.

Q. All the territory in the Fox River country. Goods billed from where?—A. From many points in the Trunk Line and Central Freight Association territories.

Q. You carried it through Manitowoc, did you?—A. Yes, sir.

Q. On the local State rates?—A. Yes, sir.

Q. Which was not filed with the Commission?—A. Yes, sir.

Q. Did you do that within three years?

Mr. MILLER. I object to that. I do not think the witness is required to answer that.

Mr. MARTYN. This is not a grand jury investigation.

Q. Did your company do it up to the 28th day of August, 1906?—A. I don't know that our company did it at all.

Q. You don't know that your company did it at all?—A. No; I say that was done in connection with all lines.

Q. How do you know it was done if your company didn't
10670 do it?—A. How do you know the sun shines? You don't know whether it is the sun or not.

Q. You say you don't know that your company did it at all. Now, what company did do it if your company didn't?—A. All companies, all lines.

Q. Name one of them.—A. The Chicago Great Western.

Q. The Chicago Great Western doesn't run to Manitowoc, does it?—A. I am talking about in a general way.

Q. I am talking about Manitowoc. What company did make those shipments?—A. Every line running into Wisconsin made shipments.

Q. Name some of them.—A. I don't think I need go any further when I say that all companies did.

Q. I want you to give the cases in which they have done this.—A. Oh, I know what you want. I can't give you specific instances because I don't know them.

Q. You can't give specific cases?—A. No; because I don't know them.

Q. Now, you say you do not consider that legal since August 28, 1906?—A. I didn't say that. I didn't say anything about the legality of the transaction at all, because I am not a lawyer. You know more about that than I do. But I say that since September 29, 1906, when the Commission issued an order that State tariffs must be filed when applied on interstate business that was an indication that they themselves knew that State tariffs were not filed that had been applied on interstate business.

Q. Now, as a matter of fact, didn't they first make that order February 13, 1888?—A. No; I don't consider that an order at
10671 all, and it never has been considered an order.

Q. It never has?—A. No, sir; even by the Commission itself.

Q. Why not?—A. They never brought that up. That was simply a suggestion. It was not even an administration rule. It was simply a suggestion on the part of the Commission that State tariffs should be filed with the Commission. Read their order issued September 29, 1905, and you will see the difference between the language used in that and the language used in their order.

Q. As a matter of fact, wasn't that order or that rule of February 13, 1888, published in a pamphlet and circulated to the railroads

December 1, 1891, generally?—A. That document was; there is no question about that.

Mr. MILLER. That particular document was issued in 1906.

Mr. KELLOGG. Oh, no, it wasn't; it was in 1891.

Mr. MILLER. It has got a print on it of 1906.

Mr. KELLOGG. Regulations, December 1, 1891.

WITNESS. I don't remember the date, but there was a time when the Interstate Commerce Commission suggested to the railroads that State tariffs when used in connection with interstate business should be filed with the Interstate Commerce Commission.

Q. Now do you remember a traffic meeting in connection with the Interstate Commerce Commission that was held in Chicago in September, 1894, in which the "form and contents of rate schedules, and the authority for making and filing joint tariffs," was discussed?—A. No; I never heard of that.

Q. And do you remember that the Commission made a report and an order based on that?—A. I don't know.

10672 Q. You never heard of that—and in that report they ordered that all tariffs should be made in conformity not only with the rulings then made, but with the ruling made in 1888, which they had given to the railroads.

Mr. MILLER. I object to this on the ground that the counsel can not, holding a document in his hand, put any such question to the witness. The document is not produced and shown the witness or shown to counsel for the defendant.

Q. Do you remember that?—A. I don't remember that.

Mr. MILLER. This document was not one the witness made.

WITNESS. I don't know anything about it.

Mr. KELLOGG. I show you the report and opinion of the Interstate Commerce Commission, in which they say——

Mr. MILLER. Well, I object to that.

Q. In reference to this publication of December, 1891, containing that previous order: "This statement was published in pamphlet form in December, 1891, and widely distributed to railroad officials having charge of the preparation of rate sheets, and to other persons presumably interested in such announcement. It set forth at considerable length the various questions involved, and stated quite fully the information which should be given to the public in the published schedules of carriers subject to the act." And then at the end of this report they make an order in which they require the railroads to comply with those. Do you remember that?

Mr. MILLER. I object to the document, as counsel purports to read it, on the ground that it is incompetent and there

10673 is not any evidence of the truth that it purports to recite; that it is immaterial whether the witness remembers it or not, as it is not a document made by the witness, and that it is not proper cross-examination.

A. I don't understand as yet that the Commission ever issued an absolute order requiring State tariffs to be filed. They did issue an

order in which they stated the size and the manner in which interstate tariffs should be constructed, but up to the time when the Interstate Commerce Commission was reorganized, sometime after August 28, 1906, and, if I remember the date correctly, it was September 29, 1906, then they did promulgate an order.

Q. Now, on September 29, 1906, this is the order they made, isn't it? It is not headed an order; it is not named an order, but it simply says: "Filing intrastate rates. All intrastate or other rates which are used in combination with State rates for interstate shipments must be posted and filed with the Commission, and can only be changed as to such traffic in accordance with the act." Is that correct?—A. That is correct; yes.

Q. Now, listen to this of 1888 and see what is the difference: "Roads located wholly in one State or Territory which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through tickets or bills of lading, should file tariffs covering such traffic with the Commission." What is the difference?—A. I think there is a very great difference

Q. Well, name the difference.—A. That says they should
10674 file the tariff.

Q. And this (defendant's Exhibit 115) says they must?—A. And that says they must.

Q. Now, what is the difference between "should" and "must?"—A. "Should" is their opinion, just simply their opinion, that it would be a great aid to the Commission if they would do that in the conduct of the business, and here they say absolutely and mandatory that you must file your tariffs.

Q. The only distinction you make between those two is that here they use the word "should" and in the other they use the word "must?"—A. I don't say that is the only distinction.

Q. Is there any other?—A. There might be. There might be a difference in the legal phase of the question now as against——

Q. Now, what difference do you know of?—A. I don't know of any, but I say there might be.

Q. You understand "should" to be merely a suggestion to the railroads that they could obey or not, just as they pleased, do you?—A. Well, I don't think it was an order; I don't think they made an order.

Q. Is there anything in that in the form of an order?—A. Yes.

Mr. Martyn. I suggest if counsel wants to ask the witness about any of those documents that he leave them before him long enough to look at them and long enough to see that one applies to a through bill of lading and the other does not.

Q. Is there any difference in that respect, that one of them names a through bill of lading and the other does not?—A. I would
10675 not undertake to answer the legal phase of the question, but I do say that the railroads as a whole and the Commission itself did not consider that the document of 1889 was a mandatory order on the railroads to file all State tariffs with the Commission.

Q. How do you know the Interstate Commerce Commission so considered it?—A. Because they did not require it.

Q. Didn't they, in an opinion published in 1899, say that it must be done?—A. I don't know.

Mr. KELLOGG. Hand me that report of the Interstate Commerce Commission—the decision of 1899. While they are getting that I will come back to another matter.

Q. Now, referring to these Alexandria rates, that through tariff from St. Louis to those points you named was a commodity rate, wasn't it?—A. Yes, sir.

Q. And it named a rate of from 36 to 40 cents a hundred, didn't it?—A. Yes, sir.

Q. And it was a greater rate than the combination of the 15-cent rate and the local State rates?—A. It was a higher rate than the combination of locals.

Q. Now, referring to this decision of the Commission, made April 12, 1899, published in the Interstate Commerce Commission Reports, volume 8, page 185, I notice that the Chicago & Northwestern Railroad was a party to that case, and the decision, among other things, required the local State rates, when used as part of a through shipment, to be filed with the Commission, under the act to regulate commerce. Did you ever hear of that [handing book to the witness]?

Mr. MARTYN. I ask the witness to read the whole paragraph.

10676 Mr. KELLOGG. Yes; read the whole paragraph if you wish to.

Q. Did you ever hear of that decision?—A. No, sir.

Q. You didn't know that your company was a party to it?—A. No, sir. Mr. Kellogg, I don't intend to try to argue with you as to the legal phase of the question. I am only talking about what was the practice of the roads and what was being done at the time these tariffs were in effect.

Q. But when you say the Interstate Commerce Commission did not understand that those were to be filed, and you are confronted with such a decision, how can you say so?—A. No; I didn't say that. I said that the Commission were well aware of the fact that those rates were not filed with the Interstate Commerce Commission.

Q. The Commission were well aware that the railroads prior to 1903 were paying rebates, weren't they?—A. I don't know.

Q. You don't know that?—A. No.

Q. You know they were, don't you?

Mr. MILLER. I object to that as not proper cross-examination.

A. I don't know anything about it.

Q. You swear you never knew——

Mr. MILLER. I object to that.

Q. That the roads were paying rebates prior to 1903?—A. I shall not answer any question of that kind.

Q. You decline to answer?—A. Yes.

Q. Do you? [No response.]

Q. Do you decline to answer? [No response.]

Q. Now, you say the Chicago switching district was under-
10677 stood to include Whiting, Indiana, and all the small towns around Chicago?—A. Yes; the Chicago switching district was defined in the application sheets applying Chicago rates to and from those points. That is what we would call the Chicago switching district.

Q. Which included Whiting?—A. Which included Whiting.

Q. And you made Chicago rates apply to Whiting with what minimum?—A. The minimum that the Chicago & North Western road made, I believe, on commodities was 5 cents per 100 pounds.

Q. Did you ever have any other minimum than 5 cents? Anything less, I mean?—A. On certain commodities; yes, sir.

Q. On what commodities?—A. On stone, for instance.

Q. Did you on oil?—A. Yes, sir; I think we had an application of a 3-cent minimum on oil.

Q. Filed with the Interstate Commerce Commission?—A. Yes, sir.

Q. When?—A. I don't remember the date, but we published a special on oil, I think, making a minimum of 3 cents per 100 pounds.

Q. That is, you absorbed the switching charges from Whiting to Chicago to the connection with your line on any rate on oil that paid you 3 cents a hundred?—A. Yes, sir.

Q. That is, you deducted the switching charge from that 3 cents a hundred rate?—A. Yes, sir.

Q. Now, isn't it a fact that that 3-cent minimum was not filed with the Commission until after 1905?—A. I can't tell you the date when it was filed with the Interstate Commerce Commission.

Q. Isn't it a fact that for years prior to that your road
10678 had absorbed the switching charges on oil going to Milwaukee on a 3-cent rate?—A. I don't know anything about that.

Q. Without any published tariff for it?—A. I don't know about that. I know that at the present time we have, and have had for a long time, a rate of 3 cents per hundred pounds from Whiting to Milwaukee.

Q. From Whiting to Milwaukee. For years you have had that rate, haven't you?—A. Yes.

Q. For the Standard Oil?—A. Not for the Standard Oil—for anybody.

Q. Nobody has shipped on it but the Standard Oil Company, has there?—A. I presume not. If there was any other shipper of oil at Whiting, we had the rate, and that was published and everybody knew about it.

Q. Now, will you look and see when you filed that tariff with the Interstate Commerce Commission?—A. I will be glad to.

Q. Don't you recollect that it was after the Department of Commerce and abor discovered the fact that you were paying switching charges out of that 3-cent rate?—A. No, sir.

Q. You don't recollect?—A. I am quite sure that it was not, because in the report of the Bureau of Corporations the only fault found with us was that we made a lower minimum on oil than we did on something else.

Q. Since about 1898 you have applied these Chicago rates to Whiting by application sheets?—A. Yes, sir; so far as our line is concerned. I don't know what the other roads have done.

Q. And in those application sheets you have listed a list of the tariffs applicable, haven't you?—A. No, sir.

10679 Q. Never have done so?—A. We have never undertaken to list the tariffs applicable to Whiting or the other suburban points. We make an application of the rate and we say that Chicago rates will apply at those points.

Q. Do you say that the application sheets of the Chicago & North Western road do not contain any list of tariffs applicable to Whiting?—A. That is what I say.

Q. And never have?—A. I don't say they never have. I say they don't now, and I can't remember that they ever have.

Q. Will you look and see?—A. Will I look and see?

Q. Yes, sir.—A. Whether they have ever, or whether they do now?

Q. Whether they do now.—A. I will state positively that now they do not.

Q. Have you got any of them here?—A. No; I haven't the tariff here, I haven't the application sheet.

Q. The application sheet does not contain any list of tariffs?—A. No, sir.

Q. None at all?—A. I don't think so. That is my recollection.

Q. Will you bring in the application sheets applicable since 1903, Mr. Eyman?—A. I don't think I can go back to 1903, because we do not keep our tariff files where there are——

Q. Well, bring in the ones that are applicable now.—A. I will bring you the tariff sheet as we have it to-day.

Q. All right, sir.—A. The one now in force.

Mr. KELLOGG. That is all.

Mr. MILLER. Before the witness leaves the witness stand I want to say that I do not think counsel for the Government

10680 has fairly presented to the witness the paper that counsel held in his hand and produced, being a report and opinion of the Interstate Commerce Commission, decided September 8, 1894, in the matter of the form and contents of rate schedules, and the authority for making and filing joint tariffs, and the order therein contained. The order relates to joint tariffs, not to the question of filing the local tariffs that are used in shipments within a State as part of the transportation from one State to another, and I now offer this document in evidence as a defendants' exhibit, if there is no objection. It will show for itself then.

The document was marked defendants' Exhibit 193.

Redirect examination by Mr. MARTYN:

Q. Mr. Eyman, I again call your attention to petitioner's Exhibit 598, which Government counsel have stated to be a secret tariff. I call your attention to the words at the bottom, "Authority No. 4404, La. Com.," and ask you to assume, as has been testified in this case, that that denotes that under the Louisiana law the railroad commission of that State first issued an authority for the issuance of that tariff, and that subsequently, after being issued, it was filed with the Commission.—A. That is as I understand.

Q. With those facts in mind, would you as a railroad man call that a secret tariff?—A. No, sir.

Q. Now, without quibbling as to whether the order which Government counsel have shown to you, the so-called order of the Commission of 1888, was an order, or a suggestion, or whatever
10681 it may have been, what is the fact as to whether or not the railroads complied with or acquiesced in that order or suggestion, or whatever it may have been?—A. They did not comply with the order or acquiesce in the suggestion that all State rates should be filed with the Interstate Commerce Commission.

Mr. MARTYN. That is all.

Mr. KELLOGG. You will look up that Milwaukee question as to when that tariff was filed?

WITNESS. Yes, sir.

Q. And come back to-morrow morning, will you?—A. Yes, sir.

Mr. MARTYN. With regard to defendants' Exhibit 145, in connection with the correction in mileage as shown on the defendants' exhibit that I referred to, we offer in evidence "New York Central Lines No. 58, list of officers, agents and stations of the Lake Shore & Michigan Southern Railway, showing the Official Mileage of that Road," and ask to have the cover, the top part of page 1 and all of pages 4, 5, 6, and 7 copied into the record.

(The document was marked "Defendants' Exhibit 194.")

Mr. KELLOGG. Objected to as incompetent. There is no evidence that it is such a document.

Mr. MARTYN. We will call an officer from that road to identify it.

Mr. MARTYN. In regard to defendant's Exhibit 120, it was pointed out by counsel for the Government that the rates to Rutland
10682 and Bellows Falls from Norwood had been interchanged. Defendants' Exhibit 120 has been rewritten and the correction made to make the rates from Norwood to Rutland and Bellows Falls correspond with the tariffs that are in evidence.

Mr. KELLOGG. The other exhibit remains in. What exhibit number do you give this one?

Mr. MARTYN. We offer this as defendants' Exhibit 120 corrected. The corrections on defendants' Exhibit 120 make necessary the corrections on defendants' Exhibit 122 so far as the cost of transportation from Olean was made up of the computation from the figures shown on defendants' Exhibit 120; that is to say, the rates to those points which were made upon combination of the rate to and from

Rutland were 3/10 of a cent per 100 pounds too much, and those that turn upon the combination of rates to and from Bellows Falls were 3/10 of a cent per hundredweight too small. Sheet 1 of defendants' Exhibit 122 has been rewritten and the correction made to correspond with defendants' Exhibit 120 corrected. I offer this in evidence and ask that it be marked as defendants' Exhibit 122, sheet 1, corrected.

The paper was so marked.

Mr. MARTYN. In like manner, so much of sheet 1 of defendants' Exhibit 177 as show rates made up from the computation shown on defendants' Exhibit 120 were likewise wrong to the extent of 3/10 of a cent with regard to combinations on Rutland or Bellows Falls. Sheet 1 of defendants' Exhibit 177 has accordingly been rewritten and the corrections made to conform with the rates as shown on defendants' Exhibit 120. I offer this in evidence and ask that
10683 it be marked defendants' Exhibit 177, sheet 1, corrected.

The paper was so marked.

(An adjournment was here taken until the morning of Wednesday, October 21, 1908, at 10.30 o'clock.)

10684 803 FEDERAL OFFICE BUILDING, CHICAGO, ILL.,
Wednesday, October 21, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

FRED ZIMMERMAN, recalled for further cross-examination, as follows:

By Mr. KELLOGG:

Q. Did you look up the rates on the Michigan Central Rai[illegible] from Toledo to various places in New England?—A. Yes, sir; and I find, Mr. Kellogg, that we have no rates, or did not have, in 1903-4, and 5, on oil from Toledo to Central Vermont Railway stations, nor did we have any rates via the Blue Line to Maine Central Railway stations. We had through rates from Toledo via Blue Line to Somerville, Massachusetts, via E. & W. division, of 27 cents.

Q. What do you mean by the E. & W. division?—A. I think that is Eastern & Western division. You will note in the Red Line book Somerville is shown, E. & W. division, Note 5, which would permit the application of the Boston rate to Somerville, and the Blue Line book is practically the same.

Q. Where is Somerville?—A. Somerville is a suburb of
10685 Boston, I think.

Q. Practically Boston rates—practically a part of the city of Boston, isn't it?—A. I am not sure about that, Mr. Kellogg.

Q. All right, go ahead.—A. I find that from January 1 to December 16, 1903, as per Michigan Central I. C. C. No. 809, we had a 33-cent rate to Portland; and from December 17, 1903, to June 13,

1904, as per I. C. C. No. 1922, we had a 33-cent rate to Portland; and that effective June 13, 1904, as per Supplement 3 to I. C. C. No. 1922, the rate was made 37 cents, and continued good in the balance of 1904 and 1905.

Q. Was that a through rate or a rate plus the arbitrary?—A. It was a through published rate in that tariff.

Q. That was 6 cents above the Boston rate?—A. 6 cents, for the period up to June 13, 1904, and after that 10 cents above.

Q. 10 cents above the Boston rate. Now, to the other points on the Boston & Maine Railroad you did not make Boston rates then?—A. We did not have any joint through rates then via the Blue Line.

Q. Then, my statement was substantially correct, that by the Michigan Central Railroad during that time, with the exception of the Fitchburg division of the Boston & Maine, and the Boston & Albany Railroad, your road did not make Boston rates to New England points?—A. I am not sure as to whether Note 5 in the Blue Line tariff covered other than Fitchburg division points. I presume you have looked that up. I have not gone into the details of it, Mr. Kellogg.

Q. We have.—A. Now, a search of our Blue Line tariff
10686 and oil tariff from Toledo does not disclose any through rates to other than No. 5 points in the Blue Line tariff.

Q. And Note 5 points to the Blue Line tariff are the same as in the Red Line tariff, aren't they?—A. Practically so; yes, sir. They are printed from the same press, I guess, and I don't suppose there is any difference in the two.

Q. And if they only apply to the Fitchburg division, then my statement is correct that your road did not make Boston rates, through rates, to New England points other than those exceptions that I mentioned?—A. And Portland.

Q. And Portland, yes; but that is above the Boston rate?—A. Yes.

Q. With that exception?—A. Yes; via the Blue Line that is true; yes, sir.

Q. So that your road had no rates to New England points which were the same as the Boston rates, other than the exceptions which you have stated, on oil?—A. None that I can find in our files, Mr. Kellogg.

Q. Do you understand that also to have been the same condition with the Lake Shore and its connections?—A. I would not presume to say as to the Lake Shore, Mr. Kellogg. because I have not examined their tariffs. It is quite a task to do that.

Q. You do not know whether any shipments were ever made under this Grand Trunk rate to New England points, do you?—A. No, sir.

Mr. MARTYN. You don't know anything about it, do you?

WITNESS. No, sir.

Q. Don't you think it rather peculiar that if the Grand
10687 Trunk had an open published rate to all New England points practically, which made the Boston rate to those points, that your road would have had much higher rates?

Mr. MILLER. I object to that as incompetent and immaterial.

Mr. KELLOGG. He is an expert.

Mr. MILLER. Go ahead.

A. That does not necessarily follow, Mr. Kellogg. I will explain why. The Grand Trunk controls the Central Vermont Railroad, and did in the years mentioned, as I understand it, and it would be extremely odd if they did not publish rates from western points so as to give them the maximum haul to a line they controlled, and also to Portland, one of their own points.

Q. But, Mr. Zimmerman, they did not control the Boston & Maine, the Maine Central, or the New York, New Haven & Hartford?—A. No.

Q. And your road was just as much interested in New England rates as the Grand Trunk?—A. Yes.

Q. Because your road and the Lake Shore are the most direct connections to all New England points, are they not?—A. Well——

Q. The shortest lines; isn't that true?—A. Our competitors do not claim so, Mr. Kellogg.

Q. You claim so, don't you?

(Witness laughs.)

Q. Now you say you think it would be strange if the Grand Trunk should not make those rates. The New York Central, which controls the Michigan Central and also the Lake Shore, also
10688 controls the Rutland Railroad?—A. Yes, sir.

Q. Don't you think it strange that it should not make rates on the Rutland road direct and to all points?

Mr. MILLER. That is objected to for the same reason.

A. As I recall that oil tariff from Toledo, it did name a rate of 27 cents to Bennington, Vermont, Mr. Kellogg.

Q. Oh, there are a few points on the Rutland Railroad where those rates were made?—A. As I explained to you yesterday, Mr. Kellogg, I am not familiar with the conditions from Toledo in the years 1903, 1904, and 1905. I simply sought to look up the record, such as it was in my office, of the rates of those days—of those years.

Q. I show you the Red Line book, which contains, on page 5, "Restrictions governing traffic for Rutland Railroad points." "Petroleum oil to points on the Rutland Railroad can not be taken at rates named in this tariff. Shipments will be subject to local rates from Norwood, New York."—A. Yes, sir.

Q. Now, after looking at that, it is a fact that your road did not make, with perhaps one or two exceptions or two or three exceptions, through rates on the Rutland Railroad, did it?—A. I would not say positively as to that, Mr. Kellogg.

Mr. KELLOGG. That is all.

WITNESS. May I correct a possible impression I gave yesterday with respect to that man employed at Washington, concerning whom you spoke?

Q. Yes, sir.—A. As I recall my answers to your questions, the impression may have been given that he was an exclusive employee

of the Michigan Central and the New York Central. The
10869 man I had reference to was employed by the traffic associations—the Central Freight Association and the Western Trunk Line Association, and I think the Eastern Trunk Line Association and the Michigan Central is a member of the Central Freight Association, and indirectly this man is an employee of ours.

Q. You have no knowledge as to whether your system of roads—that is, the New York Central system—also keeps a man there?—A. No, sir. There was one other question you asked me that I am still looking up, as to State tariffs with a notation "Not to be posted." Now, our records of those days—of those years—are not very complete, and my clerk spent a lot of time in looking up this information, and he is now working on the other. If you will give me more time on that I will be obliged to you.

Mr. KELLOGG. All, right, sir.

10690 V. D. FORT, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. What is your full name?—A. Van Dyke Fort.

Q. Where do you live?—A. Chicago, or Flossmoor, rather, at present, a suburb of Chicago.

Q. You are connected with what railroad?—A. The Illinois Central.

Q. How long have you been connected with that railroad?—A. A little over sixteen years.

Q. Does that cover your whole railroad experience?—A. No; I had experience for about seven years prior to that with other companies.

Q. What is your present position?—A. Assistant general freight agent.

Q. How long have you held that position?—A. About six years.

Q. Prior to that time, what position did you hold?—A. Chief clerk and chief tariff clerk, general freight department.

Q. Located at Chicago?—A. At Chicago.

Q. How long have you been located at Chicago in connection with your railroad work?—A. Twenty years, nearly.

Q. So that you have been familiar with tariffs and freight matters for twenty years or more?—A. Yes, sir.

Q. As chief clerk you had to do, or had under your charge,
10691 the quoting of rates?—A. Yes.

Q. And are familiar with the rates that were quoted by your railroad and railroads commonly?—A. Yes.

Q. Asking you to go back now to a time prior to the enactment of the present interstate-commerce law, commonly known as the "Hepburn law," and, say, prior to October 1, 1905, what was the custom of railroads prior to that time with reference to the use of the sums of the locals where that was less than a through rate or where there was no through rate?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. The general practice was to apply the lowest combination of locals that could be found, when such combination would make less than the through rate. That was the practice of all the railroads, so far as I know, certainly of the Illinois Central, and it was the practice of the shippers to find the combinations for themselves if they could. The railroad had to do it in order to secure the traffic.

Q. And you did the same when there was no through rate?—A. And when there was no through rate.

Q. What was the custom of the railroads with regard to filing with the Interstate Commerce Commission of tariffs that merely named rates between points in the same State?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. It was not customary at that time to file such tariffs, purely intrastate tariffs.

10692 Mr. KELLOGG. You are going over the same ground, as to the use of the local rates unfiled on through business, as you did with the other witness?

Mr. MILLER. Substantially.

Mr. KELLOGG. Then all this testimony will be taken subject to the same objection that I made to the other witness, without repeating it.

Mr. MARTYN. Certainly.

Mr. MILLER. You may regard that you have made an objection to each question.

Mr. KELLOGG. All right.

Q. Now, in getting the lowest combination you could, if the use of such an unfiled State tariff was available to secure to lowest combination, did you use that?—A. Yes; we did.

Q. And did you use that and quote it regardless of the fact that the shipment came from another State or was going into another State?—A. Yes.

Q. Did you do that with regard to all shippers?—A. Oh, yes; all shippers.

Q. And as to all classes of freight?—A. As to all classes of freight.

Q. You are familiar I suppose with what is commonly known as the Chicago switching district?—A. Yes, sir.

Q. What has been the custom of the railroads leading out of Chicago with regard to the application of Chicago rates to points in the Chicago switching district?—A. It has been the practice for a great many years to apply the Chicago rates from all switching

10693 points, points reached on the switching charge, to competitive points at least; with some companies to local as well as competitive, but with all roads to competitive points. It has been so with the Illinois Central.

Q. Did the roads leading out of Chicago through Illinois commonly have a set of unfiled Illinois State rates?—A. Yes.

Q. Was it customary to apply those rates to points in the Chicago switching district?—A. Yes.

Q. Including those points that are located in the State of Indiana?—A. Yes; including such points as Hammond, East Chicago, and Whiting.

Q. In such cases the switching charge that was absorbed was commonly the charge fixed in the tariffs of the belt lines or switching roads?—A. That is right.

Q. And as you understand, the tariffs of such belt lines, at any rate in so far as they applied to points in Indiana, were filed with the Interstate Commerce Commission by the belt roads?—A. I should say they were. I could not be certain about that without referring to the tariffs to see whether they show it on the face of them.

Q. But it was common to pay to such belt roads their tariff charges, which were absorbed by the trunk line that received the freight?—A. Yes.

Q. Mr. Fort, I show you a copy of Chicago & St. Louis Traffic Association Tariff No. 24, its I. C. C. No. 3; also two copies of the Railroad and Warehouse Commissioners' Revised Schedule of Reasonable Maximum Rates and Charges, etc., including the classification of
10694 freight, one effective July 1, 1895, and the other January 1, 1900. I also show you a copy of the Chicago & Alton Railway Company's Tariff I. C. C. 981, effective August 13, 1901; a copy of the same railroad's Tariff I. C. C. No. 1203, canceling the last-named tariff and effective June 9, 1903; also the same railway company's Tariff I. C. C. 1407, canceling the last-named tariff and effective July 18, 1904. I also show you a copy of the same railroad's tariff G. F. D. 10525, effective August 15, 1903, filed with the Interstate Commerce Commission on December 21, 1905, as I. C. C. No. 1579. I also show you the same railroad company's Tariff Special G. F. D. A209, which is petitioner's Exhibit 552, and No. A447, which is petitioner's Exhibit 553, these last two named tariffs being effective in the years 1903 and 1904, respectively. I ask you to examine all of these papers so shown you and to state whether or not from those documents you could have, in the years 1903 and 1904, quoted a rate for the transportation of petroleum and its products, in carloads, from Whiting, Indiana, to East St. Louis, Illinois, and if so, what you would have quoted as the lawful rate? You may assume that none of the supplements to any of the tariffs shown you affects the rates shown in the original tariffs, and you may give your answer in view of the custom and practice of railroads with regard to quoting rates in the years 1903 and 1904.—A. The effect of these tariffs of the Chicago & Alton is to establish a rate of 6 cents per 100 pounds from Whiting to East St. Louis, and I would have so quoted from the tariffs.

Mr. KELLOGG. You assume that the 6-cent rate was not filed with the Interstate Commerce Commission?

10695 WITNESS. Yes; even though the rate from Chicago to East St. Louis was not filed under the practices at that time.

Q. I again call your attention to Chicago & St. Louis Traffic Association Tariff No. 24 and the two copies of the Illinois Railroad and Warehouse Commissioners' documents to which I previously called your attention. I also show you a tariff of the Chicago, Burlington & Quincy Railroad, bearing its I. C. C. No. 4721, effective December 28, 1903, and also Amendment 3½ to this tariff, which was filed with the Interstate Commerce Commission on April 28, 1904. I also show you the same railway company's Tariff I. C. C. 4234, effective August 1, 1903, and Amendment 2 to the last-named tariff, which is defendants' Exhibit 158B, effective February 8, 1904, and I call your attention to Tariff No. 1059, description Chicago-East St. Louis, as shown on this supplement. I also show you a copy of petitioner's Exhibit 573, being the C., B. & Q. G. F. O. 1059, to which I last called your attention; and I call your attention to the fact that the Tariff I. C. C. 4234 is listed on Amendment 3½ to I. C. C. 4721, as is also Chicago & St. Louis Traffic Association No. 3. I also call your attention to the same railway company's Tariff G. F. O. No. 1247, effective January 10, 1896, but not filed with the Interstate Commerce Commission until April 4, 1904; and I call your attention to the note on various pages of this tariff, "See special tariff," and particularly in connection with the last page, where in connection with the words "East St. Louis" is the like reference "See special tariff." I ask you to examine those documents so shown you and to state whether or not
10696 you could, in the year 1904, have quoted a rate from these documents, on petroleum and its products, in carloads, from Whiting, Indiana, to East St. Louis, Illinois, and if so, what you would have quoted as the lawful rate, in accordance with the custom of railroads at that time?—A. Well, I would have to quote 6 cents a hundred pounds, Mr. Martyn, under that tariff, under this application sheet and this tariff here, this application sheet having the effect of applying the Chicago rate as named here from Whiting.

Q. By "named here" you mean as named in petitioner's Exhibit 573?—A. Yes.

Q. I show you a copy of Pennsylvania Railroad Company's tariff I. C. C. S459, effective April 10, 1904, and call your attention to the statement on the first page of this tariff: "Route in accordance with agreed percentages and as designated within;" and I also call your attention to the third page of the tariff and to the language there shown of "Route in accordance with agreed percentages." I ask you whether from an examination of this tariff you could, in the absence of a percentage sheet, quote a rate from Olean, New York, via Rochester, to Norwood, New York?—A. No. If I were in the place of the agent at Olean, New York, and I did not have the percentage sheet, I would not consider I had a rate.

Q. I show you copy of defendants' Exhibits 114A and 114B, and without asking you to make a detailed examination of these percentage sheets it will be agreed by counsel that they do not specify route via Rochester.—A. Yes; that is true.

Q. Assuming that they do not specify a route via Rochester, then I ask you whether or not that tariff and the percentage
10697 sheets do make a rate of 26½ cents per hundredweight from Olean to Norwood, via Rochester?

Mr. KELLOGG. That is objected to. All my previous objections apply to each one of these questions.

A. No; I should say they do not.

Q. In connection with the documents already shown you, the last-named tariff and percentage sheets, I show you a copy of the Pennsylvania Railroad Company's tariff, G. F. D. 114. I also show you a copy of petitioner's Exhibit 612, the same being New York Central & Hudson River Railroad Company tariff entitled Rate Order No. W. K. 201. I also show you a copy of the Central Vermont Railroad Company Interstate Freight Tariff No. Y5, and a copy of Rutland Railroad Company's tariff, I. C. C. 1436, effective December 8, 1905, purporting to cancel the last-named tariff, showing that the previously named tariff was in effect until December 8, 1905, and I ask you if from these documents you could, in the year 1904, have quoted a rate for the transportation of pertoleum and its products in carloads from Olean, New York, to Rochester, New York, and from Rochester, New York, via Norwood, New York, to Burlington, Vermont; and if so, what you would have quoted as the lawful rate?—A. I certainly would have quoted the combination of the three rates, taking the sum of them.

Q. Those are what? Specify them.—A. 9 cents per barrel in tank cars and 11 cents per barrel in box cars from Olean to Rochester; 9 cents per hundred pounds from Rochester to Norwood, and from Norwood, New York, to Burlington, Vermont, $25 per car. That
10698 would have been the rate and the only rate, I should say, in effect at that time.

Q. Now, if in addition to the documents already shown you, you had Western New York & Pennsylvania Railroad Company's tariff I. C. C. No. 161, which purports to make a 5th-class rate between Olean, New York, and Rochester, New York, of 9 cents per hundred pounds, and also Pennsylvania Railroad Company's tariff I. C. C. G No. 1977 and G No. 2242, entitled "Exceptions to official classification," containing language which classifies petroleum and its products as of the 5th class when rating is not provided for in special freight tariffs, would you make any other or different answer as to the rate than that already given?—A. No; because the commodity rates take precedence over class rates always, and at the period you refer to it was customary to use combinations of commodity and class rates.

Q. If you also had before you copy of Rutland Railroad Company's tariff I. C. C. 421, purporting to name a 3rd-class rate between Norwood and Burlington, Vermont, of 33 cents per hundred pounds, and had exceptions of the Rutland Railroad to the Official Classification putting petroleum and its products, in carloads, in the 3rd class, would you make any other or different answer than that

already given?—A. No; for the commodity rate would take precedence.

Q. I show you a copy of petitioner's Exhibit 592, the same being the Missouri Pacific Railway Company's Tariff I. C. C. 535, effective July 16, 1896, purporting to name a rate of 25 cents per hundred pounds on petroleum oil and its products from St. Louis, Missouri, to Alexandria, Louisiana; also a copy of the same railway com-
10699 pany's tariff I. C. C. 6846, canceling I. C. C. No. 535, purporting to name the same rate from St. Louis, Missouri, to Alexandria, Louisiana, this last-named tariff being petitioner's Exhibit 593. I also call your attention to the same railroad company's tariff I. C. C. No. 1744, purporting to cancel various tariffs, not including I. C. C. 535, the tariff I now show you, being effective August 10, 1897. I call your attention to the rate on petroleum shown on the fifth page of the tariff, from St. Louis and other points to Alexandria and other points, of 30 cents a hundred pounds, and I ask you what rate you would have quoted in the years 1903 and 1904 from all of these tariffs as the lawful rate for the transportation of petroleum and its products, in carloads, from St. Louis, Missouri, to Alexandria, Louisiana?—A. Why, the lower rate would have to govern. That would be the rate to be quoted. When two conflicting tariffs are in effect, that is the understanding always. The shipper is entitled to the benefit of the lower of the two rates, of the two tariffs in effect, both showing on the face of them that they are filed with the Interstate Commerce Commission; one of them only can be the rate, and, certainly, the lower rate must be the one to apply.

Q. And it was your custom in such cases to give the shipper the benefit of the lowest rate?—A. Yes, sir.

Q. I also show you a copy of petitioner's Exhibit 596, the same being Missouri Pacific Railway Company's tariff I. C. C. 830, effective October 3, 1896, and purporting to name a rate on petroleum and its products from St. Louis, Missouri, to Alexandria, Louis-
10700 iana, of 15 cents per hundred pounds, with the statement that the above rate applies only on shipments destined to points in Louisiana on the Southern Pacific Company, except stations on joint track between Alexandria and Cheneyville. I also show you copy of petitioner's Exhibit 597, the same being Morgan's Louisiana & Texas Railroad & Steamship Company's Tariff No. 2255, purporting to name rates from Alexandria, Louisiana, to various stations, including New Iberia, of 16 cents per 100 pounds; also a copy of petitioner's Exhibit 598, the same being the last-named railroad company's tariff No. 2077, purporting to name a rate from Alexandria, Louisiana, to Crowley, Louisiana, in tank cars, of 19 cents per hundred pounds. I also show you a tariff entitled "Through Freight Tariff No. 16F, I. C. C. No. 168," effective October 1, 1902, which purports to name rates from St. Louis and many other points to stations in Louisiana on the Southern Pacific Railway Company and other railroads named. I ask you to examine these documents and state whether or not, in the year 1904, you could have quoted a rate on petroleum and its products, in carloads, from St. Louis to Crowley,

Louisiana, and to New Iberia, Louisiana, and, if so, what you would have quoted as the lawful rate?—A. Your question refers to oil in tank cars?

Q. Yes.—A. The combination making lower than this rate, under the practices in vogue at the period you refer to, I would have quoted the combination, making 31 cents from St. Louis to New Iberia, and 34 cents to Crowley.

Q. That is to say, you quote the combination?—A. The combination of the local rates, the local rate from St. Louis to Alex-
10700 andria, plus the rates from Alexandria to New Iberia and Crowley, respectively.

Q. As being less than the through rates named in Through Freight Tariff No. 16F?—A. As being less than that through rate which you have shown me here.

Q. I show you a copy of Santa Fe System Tariff No. 5821, effective January 29, 1902, not purporting to have been filed with the Interstate Commerce Commission, stating upon its face that it is governed by the western classification, making a rate between Los Angeles, California, and Redondo, California, of 25 cents per hundred pounds, 5th class, and ask you to assume that the western classification puts petroleum and its products, carloads, in the 5th class. I also show you a copy of Santa Fe System Tariff No. 7019, effective February 20, 1904, and call your attention to the rate shown on page 9 between Redondo, California, and Los Angeles and intermediate points on crude oil in tank cars of 10 cents per barrel. I also show you a copy of petitioner's Exhibit 669, dated Los Angeles, September 15, 1904, purporting to name a rate between Redondo and Los Angeles of 7½ cents per barrel on petroleum and its products, carloads, signed Edward Chambers, and ask you to assume that he was then the general freight agent in California of the Santa Fe Railway. Will you please examine these tariffs and state what you would have quoted at the time the tariff last shown you, petitioner's Exhibit 669, was in effect, as the lawful rate for the shipment of the commodities there mentioned from Redondo to Los Angeles, California, when destined to points in Arizona on the Southern
10701 Pacific Railway. You may assume that there was no joint through rate between the Santa Fe Railway Company and the Southern Pacific Railway Company from Redondo to points on the Southern Pacific Railway in Arizona. Assume that the Santa Fe System Tariff 5821 has no effect upon the situation, except to name a 5th class rate.—A. I would not use that at all. The effect of this exhibit, petitioner's Exhibit 669, would be to change the rate shown in the original tariff here from 10 cents per barrel to 7½ cents per barrel of 42 gallons, so I would quote 7½ cents if I were the agent at Redondo.

Q. Being the rate shown in petitioner's Exhibit 669?—A. Yes.

Q. Now, if a shipment had been made at the time petitioner's Exhibit 669 was in effect, and the agent had collected 10 cents per barrel, and a claim for overcharge was made within a reasonable time,

would you have authorized the payment of such claims?—A. Yes.

10703 Q. I show you a copy of Grand Trunk Railway System Tariff I. C. C. No. A944, and ask you to examine that tariff and state whether or not it names a rate on petroleum products, carload, from Toledo, Ohio, to Boston, Massachusetts, and, if so, what the rate is.—A. 27 cents per hundred pounds.

Q. Do you find any reference on this tariff to any shippers' guides?—A. Yes, sir; I do.

Q. And on the face of the tariff do you find any reference to the National Despatch-Great Eastern Line?—A. Yes.

Q. I show you copy of the National Despatch-Great Eastern Line No. 9, effective January 1, 1903. Assuming that this Guide No. 9 was still in effect at the date of the Tariff I. C. C. 944, would you understand the guide shown you to be the guide referred to in this tariff or one of the guides referred to in this tariff?—A. I would.

Q. From that tariff and the guide shown you, will you state whether or not you find a rate from Toledo, Ohio, to Burlington, Vermont, and, if so, what rate you find?—A. I find the guide makes the Boston rate applicable, which is 27 cents per 100 pounds.

Q. I call your attention to the language on the first page of this guide, the third paragraph, with regard to petroleum, the last words of which are: "But such shipments will be subject to special tariffs and local regulations of railroads interested."—A. I think it is very plain that that means that this guide of itself does not establish the Boston rate to Burlington, Vermont, but you must refer to a petroleum tariff, and referring to this petroleum tariff from Toledo you will find that it applies in connection with the National Despatch-Great Eastern Line and refers to the list of

10704 stations to which the above rates apply, the rates as specified at the top of the second page. That very plainly means that the Boston rate applies. This clause here is simply a caution that without a special petroleum tariff that distinctly applies the Boston rate to Burlington, the Boston rate would not apply.

Q. And as a freight man you interpret these two documents as applying the Boston rate to Burlington?—A. Oh, without any question.

Cross-examination by Mr. KELLOGG:

Q. You say the clause in the National Despatch-Great Eastern Shippers' Guide, that petroleum and its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, means that this guide of itself does not establish Boston rates to New England points?—A. Yes; you must have the tariff in connection with it.

Q. Does that guide of itself establish any rate anywhere?—A. No; it merely shows the basis of the rates to the points of destination specified alone apply in connection with the tariffs that contain the actual figures—the rates themselves.

Q. Yes; but in order to make any rate to any point there must be a tariff besides this guide book?—A. Yes; such as that tariff there.

Q. This tariff here?—A. Yes.

Q. So that the guide book itself makes no rates?—A. No.

Q. Now, what was the object of that clause in there?—A. The object of that clause, it appears to me was to caution
10705 agents and others using the guide that the 5th class rate possibly in the class rates would not apply, that a commodity rate would not apply unless the tariff containing the rate said it would.

Q. That is, the 5th class rate would not apply unless the tariff containing the rate said so?—A. Yes.

Q. The commodity tariff would not apply unless the tariff naming the rate said so?—A. Yes.

Q. Now, will you please tell me where that tariff states that the Boston rate will apply to any particular place and names the rate?—A. Yes; I think it is very plain. It applies on the face of it in connection with the National Despatch-Great Eastern Line.

Q. Now, wait a moment about that.

Mr. MARTYN. Go ahead and answer the question.

Q. You say it applies on the face of it?—A. Yes.

Mr. MILLER. I submit to the examiner that the witness ought to be permitted to finish his answer.

Mr. KELLOGG. I will give him every opportunity to explain the back of the tariff, but I would like to have the face of the tariff all together.

Q. You say it applies on the face of it. Please state how it does apply on the face of it.—A. We can not consider the entire tariff the face of the tariff. On the face of the tariff it says: "Grand Trunk Railway System and Detroit & Toledo Short Line Railroad in connection with various railroads and connections as specified in the following agents and billing lists," and then it specifies the
10706 National Despatch-Great Eastern Line on the second page.

Q. Now will you let me ask you a question about that?—A. I have not quite completed my answer. On the second page it says: "For list of stations to which above rates apply, see various fast freight line billing instructions." It names a rate to Boston of 27 cents. The billing instructions referred to are plainly that issue there, which makes Burlington, Vermont, take Boston rates. There you arrive at the conclusion, the inevitable conclusion, that the rate from Toledo to Burlington, Vermont, was 27 cents.

Q. Now, the front simply refers to this National Despatch-Great Eastern Line for the connections. Doesn't it say so in so many words—"for connections," not for rates? It says nothing about rates, does it? "For connections" is the reference, isn't it?—A. Yes; the line of road on which Burlington is located.

Q. Well, the line of road on which Boston is located also?—A. Then, again, as to the points on this tariff——

Q. Well, on the face of it, it simply refers to this National Despatch for the connections, doesn't it?—A. For the connections.

Q. That is all; it doesn't say a word about rates. Now on the back of it does it name the Great Eastern or does it name any other?—A. No; but it names the Great Eastern as much as it does any other.

Q. It does not name any? It simply says various freight line books?—A. Yes.

Q. There are many others, aren't there?—A. Yes.

Q. There are others that do not have any such restric-
10707 tions?—A. I don't know. I have not examined the other books.

Q. Now you take rates into the Central Freight Association; they would be made by this and governed by other books, wouldn't they?—A. No; they wouldn't be governed by the fast freight line books.

Q. Why not?—A. The fast freight line books apply only in the territory east of Buffalo and Pittsburg.

Q. Well, take Jersey City, Albany, New York.—A. Yes.

Q. It names rates to these points, doesn't it?—A. Yes.

Q. And there are billing instructions that would apply, are there not?—A. Yes.

Q. Now you say there is no doubt of that. When did you first see this book?—A. I saw that book a few days ago. I have seen it a great many times but not particularly.

Q. Did you ever quote a rate from that book on oil to New England points over the Grand Trunk road?—A. No; the road that I represent was not directly interested in that traffic.

Q. You don't know whether the Grand Trunk ever quoted a rate or carried a pound of oil on any such rate, do you?—A. No.

Mr. MILLER. I object to that as incompetent.

Q. You don't know whether it was ever used for shipments at all?—A. I don't know anything about that.

Q. You don't know anything about it, and yet you say there is no doubt of it?—A. My testimony is as a man familiar with the use of tariffs in the quoting of rates.

Q. And there is absolutely no doubt about it?—A. I think there is no doubt about it.

10708 Q. Are you familiar with a guide book that has got any such notation in it as that, that oil will not be taken under the guide book?—A. No.

Q. This is the first one you ever saw, then?—A. This is the only one I have looked up.

Q. Do you know as a matter of fact that, generally speaking, the railroads do not make Boston rates on petroleum to New England points—did not during those years, 1902, 1903, 1904, and 1905?—A. No.

Q. You don't know anything about that?—A. I have no special knowledge about that.

Q. Didn't you hear Mr. Zimmerman testify this morning that on his road they did not?—A. No; I did not listen to Mr. Zimmerman's concluding testimony this morning. I heard very little of his testimony.

Q. Do you know that the Lake Shore, the Michigan Central, and other roads do not make any such rate?—A. No.

Q. You don't know anything about it?—A. I don't know anything about it.

Q. Do you know that the New England roads during all those years refused to prorate with the western roads on oil?—A. No.

Q. You don't know anything about it?—A. I don't know about that.

Q. You don't know anything about the New England situation anyhow, do you?—A. No; that is out of my line.

Q. You have just been called in here as an expert on that particular tariff?—A. That seems to have been the idea.

10709 Q. You do know something about the Illinois Central, I suppose?—A. Yes.

Q. And its freight traffic?—A. Yes.

Q. What rate did the Illinois Central make during 1902, 1903, and 1904 on oil from Whiting to East St. Louis?

Mr. MILLER. I object to that as not cross-examination and as immaterial.

A. I will answer that question, Mr. Kellogg, by saying that we did not handle any oil.

Q. I have not asked you whether you handled any oil. I asked you what rate you made.—A. There were no shipments to make any rate on.

Q. Did you have a rate of 18 cents a hundred from Whiting to East St. Louis?—A. If I might be permitted to examine the Chicago and St. Louis Traffic Association tariff I could answer that question accurately.

Q. I will ask you a few more questions and will show you that in a moment. Is it not a fact that when your road was applied to, your general freight agent—what is his name? Mr. Keepers, is that his name?—A. That is his name.

Q. Was applied to in writing, in the latter part of June, 1905, to name a rate on oil applicable on the Illinois Central Railroad from Whiting to East St. Louis, in writing he named a rate of 18 cents?

Mr. MILLER. I object to that as not proper cross-examination, incompetent, and immaterial.

A. I can not say. We make a great many rate quotations, and I can not——

10710 Q. Will you look in your correspondence and see if the auditor of the Interstate Commerce Commission did not write Mr. Keepers for the rate on oil from Whiting to East St. Louis in the latter part of June, 1905, and Mr. Keepers answered that the rate was 18 cents?

Mr. MILLER. I object on the same grounds. If there is any correspondence, let the Government produce it.

Q. But that possibly a rate of 17 cents might be made on a combination of locals through Peoria—will you look and see if you have any such correspondence?—A. I have no objection to doing that.

Q. Now, you can not state offhand what your rate was, from 1900 to 1905, on oil from Whiting to East St. Louis?—A. Yes; I think I can, with this tariff before me.

Q. 18 cents, wasn't it?

Mr. MILLER. The witness refers, I think, to Tariff 24, I. C. C.

A. 18 cents would have been our rate.

Q. 18 cents a hundred?—A. Yes.

Q. During all that time?—A. Yes; perhaps that will relieve me of the necessity of looking up the correspondence you refer to.

Q. If you say that that was the rate you quoted, if you quoted any.—A. That was the rate. That tariff settles the question.

Q. All right. Now, Mr. Fort, did you know that the Chicago & Alton were making a 6-cent rate during that time and absorbing the switching charges?

Mr. MILLER. I object to that on the same grounds as to the previous questions. It is not proper cross-examination and is
10711 immaterial and irrelevant.

A. Yes; I heard that they were making a rate of 6 cents.

Q. When did you hear of it?—A. I could not tell you.

Q. About when?—A. I should think along in 1904 or thereabouts.

Q. 1905, wasn't it?—A. Or 1905. I don't know. I would have to depend entirely on my recollection of a mere circumstance.

Q. It was the latter part of 1905 that you heard of it, wasn't it?—A. I don't know when it was.

Q. Or the middle of 1905?—A. I don't know.

Q. Have you any recollection of hearing of it before that?—A. No; I merely remember that I knew that such a rate was being made.

Q. You knew the Government was investigating the matter, didn't you?—A. No.

Q. You never heard of that?—A. Not until it was given publicity in the papers.

Q. It was given publicity in the papers along in the summer of 1905, wasn't it?—A. I don't know.

Q. About that time you put in a 10-cent rate from Whiting to East St. Louis, didn't you?

Mr. MILLER. I suppose the same objection may apply to all this class of questions, as not cross-examination?

Mr. KELLOGG. Certainly.

A. We did put in a rate of 10 cents. I can't say just what date.

Q. It was about the time all the other roads put in a 10-cent rate, wasn't it?—A. About that time; yes.

Q. Now, do you remember a conference that was called by the Chicago & Alton over that subject, when that investigation
10712 was being had?—A. No.

Q. You didn't attend that conference?—A. No.

Q. You have a line from Whiting to East St. Louis, haven't you?—A. Yes.

Q. Your connection is——A. Chicago Terminal Transfer, the switching road.

Q. Where is your junction?—A. Riverdale, Illinois.

Mr. MILLER. Your line does not itself run to Whiting?

WITNESS. No.

Mr. MILLER. But the nearest point is Riverdale in Illinois, and there the connection is with the Chicago Terminal Transfer?

WITNESS. Yes.

Mr. MILLER. And from there to Whiting?

WITNESS. That is correct.

Mr. KELLOGG. What is that question? I didn't hear.

WITNESS. That our line does not run directly to Whiting, but runs to Riverdale, where we connect with the Chicago Terminal Transfer.

Q. Riverdale is near the Illinois line, isn't it?—A. Yes.

Q. About as near Whiting as the C. & E. I. is at Dolton?—A. Approximately.

Q. And from there you have a line to East St. Louis?—A. Yes.

Q. You were engaged in the oil traffic, were you not?—A. Yes; we were engaged as common carriers in the handling of freight.

Q. You did a large business, didn't you, in the shipment of
10713 oil?—A. Yes; we always have.

Q. You had in a 13-cent rate to Grand Junction, hadn't you?—A. I don't know about Grand Junction.

Q. You don't know anything about the Grand Junction rate?—A. No.

Q. Don't you know that your company was hauling oil from Evansville to Grand Junction for a proportion of a 13-cent rate?—A. No, I haven't any knowledge about that.

Q. You never heard of it?—A. I know there was some kind of a special commodity tariff in effect to Grand Junction. I don't remember the rate, and don't remember anything about it.

Q. Do you remember the 13-cent rate that was in force on your line from 1897 to 1898?—A. No.

Q. You don't remember? Grand Junction is about 700 miles from Chicago, isn't it?—A. Yes; I think that is about right.

Q. A 6-cent rate to St. Louis is no lower than a 13-cent rate to Grand Junction, is it?—A. Well, I think I would rather have the business to Grand Junction on 13 cents.

Q. Would you rather have the Illinois Central's proportion of a haul from Whiting to Grand Junction, you taking the stuff at Evansville, than to have the haul from Whiting to East St. Louis?

Mr. MILLER. This question, and this line of questions, is also objected to on the same grounds.

A. That would depend on what the proportion was.

Q. What was your proportion?—A. I don't know.

Mr. MARTYN. I would like to have government counsel point out what part of the direct examination is relevant to this cross-examination.

10714 Mr. KELLOGG. Well, it bears upon the question of whether the rate from Whiting to East St. Louis was a secret rate that his company had no knowledge of, or whether it was not, I am perfectly willing to point it out.

Mr. MARTYN. He did not testify in regard to that at all. He interpreted certain tariffs.

Mr. KELLOGG. He interpreted that he would quote a rate which was not filed with the Commission.

Q. Now, in your answer to these various questions that you would quote a rate, the 6-cent rate from Whiting to East St. Louis, the 9-cent a barrel rate from Olean to Rochester, and the 9-cent a hundred rate from Rochester to Norwood, and the various other rates which were not filed with the Interstate Commerce Commission, and were used as a part of a through line on shipments, with through consignments, you answered on the assumption that it was legal to use those rates, didn't you?—A. Yes; it was considered so at that time.

Q. You do not pretend to pass upon the question of whether the road had a right to use a non-published and non-filed rate for a through interstate shipment, do you?—A. I do not pretend to pass upon any question of law, as I am not a lawyer, but I simply testified that that was the common practice of all shippers and all railroads at the time, to use the lowest combination to be found.

Mr. MILLER. Regarding it as legal?

WITNESS. And they regarded it as legal.

Q. That is, you regarded it as legal?—A. We regarded it as legal, and we had some reason for it, too, at the time.

10715 Q. What were your reasons?—A. Take the case of two interstate rates, both of them filed with the Commission; both of those are legal tariffs. It was therefore considered logical that it was legal to combine them. Take an interstate rate which was filed, and take an intrastate rate which was not filed and which we were not required to file; there was a combination which it was possible for any shipper to avail himself of by consigning his shipment to the junction point on which the shipment was made and reconsigning and thus receiving the benefit of the combination—a perfectly legitimate transaction. Following the thing a little further, it was perfectly legitimate to make a through shipment on that combination and get the same result by a short cut.

Q. Now, the interstate commerce act made all commerce by two lines of road under common control and management interstate commerce lines, didn't it?—A. Yes; I think so.

Mr. MILLER. I object to that.

Mr. KELLOGG. Wait a moment. Let me examine this witness.

Q. And it has always been the fact that a through bill of lading made a common control and management under the rulings of the Interstate Commerce Commission and the courts, hasn't it?—A. I understand so.

Q. Now, if the through billing made common control and management, made them subject to interstate commerce, what right had they to carry the transportation without filing the tariffs?

Mr. MILLER. I object to that on the ground that the courts have never so ruled. The ruling of the court upon that was for an entirely different purpose.

10716 Q. Will you please answer?—A. I think that my explanation, which I have just given, fully covers the ground there.

Q. You think because they could evade the law by breaking the shipment and reconsigning, making two separate hauls of it, that it was just the same as though they had billed it through under common control and management, do you?—A. I don't think they broke the law.

Mr. MILLER. Wait a minute, Mr. Fort. I object to that upon the ground that the witness has not stated that they broke the law by that, but stated that they did it in compliance with the law and on the ground that neither the Commissioner nor any court has ever decided that the use of the combination was a breach of the law. The ruling of the Supreme Court, to which Mr. Kellogg refers, in the Social Circle case, had to do with the question of excessive rates and the power of the Commission over the question of discrimination between Social Circle and Augusta and did not have to do with the legality of the combination to which the witness refers.

Q. Now will you please answer the question?—A. I will answer the question, Mr. Kellogg, by stating that our counsel has advised the general freight department on many occasions, even since the passage of the Hepburn act, that it is legal for a shipper to consign his shipment to the junction point and then reconsign it, and I do not say that it is legal to protect that combination now—at least I do not know whether it is or not on a through shipment. We are respecting the opinions of the Interstate Commerce Commis-

10717 sion on all these matters. It is, therefore, a matter of opinion.

Q. Did your counsel ever advise you that you had a right to ship on a combination of locals on a through consignment prior to 1906?—A. I do not recall that the matter was up. There was not any occasion for submitting it to our counsel at that time.

Q. Why not—what was the difference in the ruling of the Commission; any?—A. I think my previous explanation covers all that.

Q. Your previous explanation is, because it was the custom you thought it was legal; is that the reason?—A. We thought it was legal.

Q. What?—A. We thought it was legal. The practice went on among all the railroads and all the shippers in the United States.

Q. And therefore you thought it was legal?—A. Yes.

Q. Now we will get at that. The practice of cutting rates and making rebates prior to 1903 was pretty general in the West—in your territory—wasn't it?—A. Yes; there was a good deal of cutting rates at different times.

Q. But did that make it legal?—A. Not at all. That is a very different thing.

Q. It is?—A. In my opinion; yes.

Q. Now, in quoting this rate from Olean to Burlington, Vermont, you say you would quote the 9-cent a barrel rate from Olean to Rochester and the 9-cent a hundred rate from Rochester to Norwood, if you were the agent at Olean. That is what you said, was it?—A. That is substantially correct; yes, sir.

10718 Q. Now, I notice by both of those tariffs that they were not to be posted, that being stated on the face of the tariff, this one being marked at the bottom and the other one at the top [placing papers before the witness].—A. Yes; I see the notation.

Q. Does that make any difference in your answer?—A. No.

Q. What is the object of having them posted?—A. Well, it is rather difficult for a railroad man to see the object, even to-day.

Q. You don't know what "Not to be posted" means?—A. That "Not to be posted," I take it, means not to be put up in the depot for the public to look at and mutilate.

Q. And to inspect?—A. And inspect. The agent is to keep it in his files. It is a State rate, and he need not put it up.

Q. In other words, it is not to be made a published rate, the same as an interstate rate?—A. It is not necessary to post it as an interstate rate.

Q. Then, if that is the case, what agent would have that?—A. I should say the billing agent and the agent at destination would have it in their respective files.

Q. But the agents of other lines of road would not have it, would they?—A. Of other lines of road, no. It is a local tariff.

Q. Then you, as agent at Olean, would not have the New York Central tariff which was marked "Not to be posted," and which reads from Rochester to Norwood, would you?—A. No; and that would be true even if it were not marked "Not to be posted."

Mr. MARTYN. Or even if filed with the Commission.

WITNESS. Or if filed with the Commission.

10719 Q. Now, let us see about that. That being the case, how would you quote a through rate from Olean to Burlington for a shipper who should happen to come in there and want a rate?—A. At the period that I referred to I would doubtless ask the general freight office, knowing that it was the custom to use combinations. I would want to be certain about the rate and I would ask the general freight office.

Q. Where is the general freight office of the New York Central road?—A. In New York City.

Q. So, if a shipper should come into the freight office at Olean and ask for a rate to Burlington, you would not take the published tariff rate of the New York Central road that you had filed with the Interstate Commerce Commission, but you would write to the New York Central general freight agent at New York to find out if there was a lower combination, would you?—A. I would at that time.

Mr. MARTYN. I object to that for the reason that the tariff does not show there was any filed rate via Rochester, and the witness has not seen any.

Q. Now, as agent of the Pennsylvania at Olean, you would write to the general agent of the New York Central at New York, would you, to see if they had a lower rate, that was not posted, from Rochester to Norwood?—A. Of course that is necessarily a hypothetical question. I think I would.

Q. You think you would?—A. If I were in the place of an agent I would want to be sure I got the rate right, so I would write to the general freight agent.

Q. Are your local agents accustomed to deal directly with
10720 the general officers of other lines—I mean your local station agents?—A. I beg your pardon. I misunderstood your question. If I were the agent of one road I would not write to the general freight agent of another road. I did not get that point when I answered your question.

Q. To whom would you write?—A. I would write my own general freight agent.

Q. At Philadelphia?—A. Yes, or wherever he would be.

Mr. MARTYN. Or Buffalo, if he were there?

WITNESS. Wherever he was.

Q. Now, what would he know about a rate from Buffalo to Norwood over the New York Central that was marked "Not to be posted?"—A. He would doubtless take it up with the connecting road if he felt any doubt about the through rate, what the through rate should be.

Q. So that the poor shipper who brought his shipment to Olean would have to wait while that correspondence went on between your general freight agent and the general freight agent of the New York Central and the local freight agent of your line?—A. The shipper very frequently has to wait for his rate quotations until some correspondence is concluded.

Q. Now, isn't it a fact, with this tariff of 26½ cents to Norwood before you, you would quote that rate because you have it in your files and it is the published tariff rate?—A. I might fall into that error; yes, sir.

Q. I think you would.

Mr. MARTYN. Mr. Fort, at the present time the shipper would have to wait thirty days, if there was not any through rate, before one could be made, wouldn't he?

10721 WITNESS. He would have to wait thirty days for a rate to be established.

Q. Don't you assume that all these rates you quote were open, published rates, known to the shippers?—A. I assume that there was no concealment about any of those rates. They seemed to be issued in a public way.

Q. If they were concealed or secret rates, you wouldn't quote them, would you?—A. If I were an agent and had been supplied with those

rate sheets, I would quote them to anybody who might ask as to what the rate was.

Q. On the other hand, suppose the rate was like Government's Exhibit 660–D, which was made by the Central Vermont Railroad and was not filed with the Interstate Commerce Commission, and on its face contained the following: "The following arrangement will apply on S. O. Company's shipments from Burlington, Vermont." you would not quote that to any other shipper, would you?

Mr. MARTYN. I object to that as not cross-examination.

A. No; as the agent I would not.

Q. Now, you say it was the custom prior to 1906 to use the combination of the locals whether they were filed with the Interstate Commerce Commission or not?—A. Yes.

Q. How do you know that was the custom?—A. My own experience in handling rate matters in my own department.

Q. In order to have had experience in handling those, you must have known of the combination of locals that was used on through billing, interstate shipments, without being filed with the Commission, must you not?—A. Undoubtedly I did.

10722 Q. Now name us one on the Illinois Central Railroad that you so issued.—A. It is impossible to recall any specific cases of that kind, they were so numerous—an everyday occurrence—thousands of them.

Q. If they were so numerous, and an everyday occurrence, can't you produce some of those tariffs here?—A. No, I don't think I could.

Q. Why?—A. It would be pretty hard to locate any particular shipment, any particular tariff that was used in that way.

Q. It seems to be pretty easy to show shipments of oil here for years back on the exact tariffs that they were made. Why can't you show it on other products?—A. I presume it might be possible to ferret them out at the expense of a large amount of time.

Q. Doesn't your freight auditor have a copy or the original of every waybill of freight?—A. Yes.

Q. Which shows the rate?—A. Yes.

Q. So that if it was shipped on a combination of local rates that were not filed with the Commission, it could be readily detected?—A. It would not be readily detected. You have to check each individual waybill and find out how the rate shown on that waybill was arrived at.

Q. Now, you can't give us a case where your road ever used a local rate for a through shipment?—A. No, I do not recall any one particular case.

Q. Well, do you recall any number of cases? If you can't recall one particular case, give us any number of cases.—A. No, I do not recall any specific cases.

10723 Q. How long ago were you asked about this custom? When was this called to your attention?—A. Within the last week or so.

Q. Didn't it occur to you to find out before you testified to it whether your road had done that?—A. No; I was simply asked as to the general practice, as I have been giving my testimony.

Q. In order to state a general practice, didn't it occur to you to find out whether your road had ever done it?—A. I knew without looking it up that was the general practice.

Q. If you know so much about it, please give us some rates that were ever used on a through billing.—A. I said that I can not recall any specific cases.

Q. Well, give us any set of rates in any State that were used so that we can find them.—A. We have some very low rates in effect between Chicago and the manufacturing town of Bradley, near Kankakee, Illinois; we have some very low rates between Chicago and Rockford and Freeport, manufacturing towns. Those rates no doubt were used from time to time in constructing through rates from points east of the Illinois-Indiana State line.

Q. On through billing?—A. On through shipments, yes.

Q. Through billing, through consignments, or were they reconsigned?—A. Through consignments.

Q. If that is the case, why can't you find them in your auditor's office?—A. That would be like hunting for a needle in a haystack.

Q. Why would it?—A. There is such a vast amount of traffic handled, so many shipments, so many waybills made.

10724 Q. Will you tell me how it was possible, then, to go to the railroad office and get all these oil shipments so readily——A. I don't know.

Q. If you can't find anything at all?—A. I don't know just as to what methods were used to get that information.

Q. Aren't you familiar with the way freight is handled in your office?—A. Yes.

Q. Don't you know that oil shipments on this 13-cent rate were taken from your books, your records?—A. No, I don't know anything about the Grand Junction case.

Q. Now, assuming you had before you that St. Louis Freight Association Tariff No. 24 and the Illinois Classification making carloads of petroleum 5th class, and the I. C. C. No. 1203, the application sheet of the Chicago & Alton, what would you say from those three documents the rate was from Whiting to East St. Louis on oil?—A. I have stated that the rate was 6 cents per hundred pounds.

Q. From those three documents, and none other, you would say the rate was 6 cents per hundred pounds?—A. You haven't given me one of the state rates.

Q. I have asked you the question from those three documents, if you had before you, as to what you would say the rate was.—A. Well, I would say it was 5th class, 18 cents a hundred, without the other tariff before me.

Q. Now you assume, do you, that the 6-cent rate would be applicable on interstate shipments just the same as though it was

10725 filed with the Interstate Commerce Commission, and that

that does not make any difference?—A. Yes; that was in accordance with the practice.

Q. Since 1906, would you quote any such rate?—A. No.

Q. Don't you understand that the Commission's order of 1888 was the same as the order of 1906, that it required all state tariffs used for through shipments, on through bills of lading, to be filed with the Commission?—A. No, I don't think there was any mandatory order to file such tariffs.

Q. You think the order published in 1888, that they should be filed was not mandatory, do you?—A. I heard that section of the order (or whatever it may be called) quoted here yesterday in these proceedings, and I noticed the word "shall," I believe, was used.

Mr. MARTYN. "Should."

WITNESS. "Should"—should be filed.

Q. You do not consider that to be mandatory?—A. I would not consider that as mandatory.

Q. That is simply advisory?—A. Simply a construction on the part of the Intersate Commerce Commission that they would like to have that done.

Q. But the railroads could do as they pleased?—A. Yes.

Q. That is your construction of it?

By Mr. MARTYN:

Q. The railroads did not, as a matter of practice, comply with that order or suggestion, or whatever it may have been, as you understand it?—A. No, it was not the practice to file intra-state tariffs.

10726 By Mr. KELLOGG:

Q. That is, you are speaking of the practice on your own road?—A. Yes.

Q. You don't know about the practice on other roads?—A. In a general way it is the same as the Illinois Central.

Q. But you have no specific case in mind?—A. No, sir.

By Mr. MARTYN:

Q. With regard to the tariff shown you that had on it the name of the Standard Oil Company, if you had such a tariff as that and had an application by another shipper for a rate, would you inquire of your general freight agent for instructions, or what would you have done?—A. Yes, sir; I believe that I would have applied to the general freight agent for instructions.

Q. Do you know of your road ever having shipped any oil from Chicago or Whiting to East St. Louis at an 18-cent rate, carloads?—A. No; I don't know that we ever carried any oil at 18 cents from Whiting to East St. Louis. I don't think we ever did.

Q. Do I understand you to say that you knew of the 6-cent rate between Chicago or Whiting and East St. Louis before the matter had been brought to your attention publicly through any Government investigation?—A. Yes; I have heard of it.

By Mr. MILLER:

Q. In answering Mr. Kellogg, on cross-examination, with certain tariffs before you or certain documents before you, you said you would have quoted an 18-cent rate on oil from Whiting to East St. Louis, and you used this document marked C. & A. G. F. D. No. 1500, entitled Chicago & Alton Railway Company, Illinois Local
10727 Freight-Rate Tariff and Classification, and assumed that that was the classification referred to in Tariff 24, did you not?—A. Yes.

Q. And that petroleum and its products, or the commodity for which you named the rate, was under 5th class?—A. Yes.

Q. You will notice in this classification that as to part of the commodities classified under class they are designated as for owner's risk and others are not?—A. Yes.

Mr. KELLOGG. I think that appeared yesterday.

Q. Yes. Now, what does that mean, Mr. Fort?—A. At owner's risk is intended to mean that the commodity was shipped at the risk of the owner.

Q. In the absence of such a specification or understanding between the shipper and the carrier that would not be the case, would it?—A. No; it would be taken at the carrier's common-law liability.

Q. The carrier's risk; and this owner's risk is intended to except the carriage from the carrier's common-law liability?—A. Yes.

Q. You say you find in here in this classification that the classification with respect to certain commodities puts the carriage at the owner's risk?—A. Yes.

Q. What is the fact about that with petroleum and its products?

Mr. KELLOGG. I do not see why you need to prove that again. It is in the record once.

A. Nothing is specified as to owner's risk.

Q. Then, the classification there of petroleum and its prod-
10728 ucts under 5th class is in cases where the carriage is at the common-law risk of the carrier and not the owner's risk; is that right?—A. That is right.

Q. Then, in quoting a rate of 18 cents to the carrier under that Tariff 24, with that document as the classification, you would not quote that rate at the owner's risk, would you?—A. No.

Q. That would be confined to cases, then, where the carriage was not at the owner's risk under the common-law liability of the carrier?—A. Yes.

Mr. KELLOGG. You would quote it the same as you would the 6-cent rate, wouldn't you, Mr. Fort?

Mr. MILLER. The 6-cent rate was quoted at the owner's risk. The transportation was at the owner's risk.

Mr. KELLOGG. There isn't a word in it about the owner's risk.

Mr. MILLER. You will find it on the waybills right straight along, and that is carried at 6 cents at owner's risk.

By Mr. KELLOGG:

Q. Now, in quoting the 6-cent rate from the documents that were before you, is there anything there to show that you would quote it any differently [handing witness petitioner's Exhibit 552]?—A. No, there is nothing there to show.

Q. Then you would quote at the common-law liability of the carrier, wouldn't you?—A. I would.

Q. Just exactly as you would quote it under the classified rate of 18 cents?—A. Yes.

10729 Q. Then, if there were any qualifications as to the shipment, in the bill of lading, it might apply to the 18-cent rate as much as to the other?—A. Yes; so far as I can see.

Q. One other question. You say you heard of that 6-cent rate. Do you know that you heard of it before the investigation of the Department of Commerce and Labor?—A. I don't know when the Department of Commerce and Labor started its investigation; I don't know exactly when it was that I heard of the 6-cent rate; but I did know of the existence of the 6-cent rate before I knew that the Government was making any investigation about it.

Q. The Government's investigation was during the year 1905, investigating various railroad offices. Is that the time you heard of it?—A. I don't know.

Q. You have no recollection of knowing it away back in 1901, 1902, or 1903, have you?—A. No.

(A recess was here taken until 2 o'clock p. m.)

10730 H. C. MARTIN, called on behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. MARTYN:

Q. What is your full name, Mr. Martin?—A. Henry Clay.

Q. Where do you live?—A. Chicago.

Q. You are connected with the Grand Trunk Railway System?—A. Yes, sir.

Q. Just what is your position?—A. I have the title of chief of tariff bureau.

Q. What duties does that position impose upon you?—A. The issuance of tariffs, circulars, and such matters as pertain to the instructions to agents regarding the handling of freight traffic.

Q. Over what part of the Grand Trunk System?—A. The lines designated as west of the Detroit and St. Clair rivers.

Q. How long have you held that position?—A. Since September, 1903.

Q. How long a railroad experience have you had in all?—A. About eighteen years.

Q. All with the same road?—A. Yes, sir.

Q. What other positions have you held?—A. Various positions, ranging from bill clerk in a local office up to my present position, through chief clerk in the general office, tariff clerk, and so on.

Q. Has your business been mostly with the freight depart-
10731 ment?—A. Altogether.

Q. So that during all that time you have been familiar with freight tariffs?—A. Yes, sir.

Q. With the use of them and the making of them?—A. Yes, sir.

Q. Quoting rates from them?—A. Yes.

Q. And the use generally of freight tariffs?—A. Yes, sir.

Q. I show you defendants' Exhibit 124–A, entitled "Grand Trunk Railway System I. C. C. No. A–944." Is that one of the tariffs of your road?—A. It is.

Q. Is the name H. C. Martin at the bottom your name?—A. Yes, sir.

Q. Was that tariff issued by you or under your authority and direction?—A. It was.

Q. Explain just what that tariff is, what it purports to do.

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. The tariff is intended or is a tariff applicable on petroleum and its products from Toledo, Ohio, to certain points within the Central Freight Association territory and other points within what is commonly known as Trunk Line or United States seaboard territory, and by cross reference to our billing lists or guides making an application to points common with the points named in the tariff or taking the same rates.

Q. What guides are referred to?—A. There are several—the Commercial Express Line, Grand Trunk Despatch Line, National
Despatch-Great Eastern Line, Lackawanna, Grand Trunk
10732 Line, National Despatch Refrigerator Line, Reading Despatch, Milwaukee & Michigan Line.

Q. Looking at the back page, the second page, of that tariff, I find certain specific points named there. What are those points commonly known as?—A. You refer to the Trunk Line territory particularly?

Q. Yes.—A. Those are what in common railroad parlance or tariff parlance we call the eastern basing points.

Q. Among those is the word "Boston?"—A. Yes, sir.

Q. Does the tariff make a rate to Boston?—A. It does.

Q. What, if any, reference is there on the tariff with regard to ascertaining other points to which the rates named apply?—A. It says plainly, right below that, "For list of stations to which the above rates apply, see various Fast Freight Line Billing Instructions," those billing instructions being referred to on the front part of the tariff.

Mr. KELLOGG. All this is taken subject to the objection that it is incompetent and immaterial.

Mr. MILLER. Yes.

Q. I now show you a copy of defendant's Exhibit 124–B, entitled National Despatch-Great Eastern Line No. 9. Is that one of the guides referred to in that tariff?—A. It is; yes, sir.

Q. With the aid of that guide, does the tariff name rates to various other points in Trunk Line territory than those specifically named on the back of the tariff?—A. It does.

Q. Take, for example, Burlington, Vermont. Does that tariff, together with the guide, name a rate to Burlington, Ver-
10733 mont?—A. Yes, sir.

Q. And what rate is named?—A. I haven't looked at it, but I know from memory it is the Boston rate.

Q. And that would make a rate of 27 cents per hundred pounds?—A. The rate that is published in that tariff, yes, sir; 27 cents.

Q. Now, referring to page 1 of that guide, the third paragraph, it has something to say with regard to petroleum oil. Are you familiar with that?—A. Yes, sir.

Q. In view of that paragraph, what do you say as to whether or not the tariff still makes a rate to Burlington, Vermont?—A. The tariff makes a rate to Burlington, Vermont, regardless of that note.

Q. The latter part of that note refers to special tariffs. Is the tariff you have before you, I. C. C. 944, one of the tariffs within the scope of that note?—A. It is.

Q. And you construe the tariff as controlling?—A. Absolutely.

Q. As chief of your tariff bureau, upon what initiative do you issue tariffs?—A. Generally speaking, and in practically all cases, from the traffic manager, assistant traffic manager, or general freight agent, or the different division freight agents in charge of specific territories; I receive advices that certain requirements are necessary to take care of the traffic moving from those territories, and that serves as my authority and guide for making the rates that I publish.

10734 Q. Do you remember, or do you know how this tariff happened to be issued and why it was issued?—A. Yes, sir; I do.

Q. Please state.—A. It was on a request from our division freight agent at Toledo, Ohio.

(A paper was marked " Defendants' Exhibit 195.")

Q. Was that request in writing?—A. It was.

Q. I show you defendants' Exhibit 195, and ask you what that is.—A. That is a letter dated September 10, 1904, from our division freight agent at Toledo, Mr. Gantt—Ira W. Gantt—requesting me to issue the rates as covered by that tariff.

Q. That is Mr. Gantt's signature at the bottom of this letter?—A. That is not his personal signature; it is his official signature, however.

Q. You know it to be such?—A. I do; yes, sir.

Q. You received that letter?—A. I did.

Q. And you now produce it from the files of your company, of your office?—A. Yes, sir.

Mr. MARTYN. I offer the letter in evidence.

Mr. KELLOGG. It is objected to as incompetent and immaterial.

10735 Q. Now, following that letter, and pursuant to that request, you issued the tariff to which I have called your attention?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. You say part of your business is quoting rates from tariffs. To whom do you quote them?

Mr. MARTYN. I don't understand that he said his business was quoting tariffs.

WITNESS. I was just going to remark that I had not made such a statement.

Mr. KELLOGG. That is what you asked him, and he said yes.

Mr. MARTYN. He said that in years gone by he had been through various grades of railroad work, and in doing that he quoted tariffs.

Q. This tariff was first put in in 1904, was it—December 12, 1904?—A. Yes, sir; that tariff was issued in 1904.

Q. And according to your understanding, that tariff makes the Boston rates to all New England, practically?—A. It makes the Boston rate to points that are indicated in this guide as taking Boston rates.

Q. That is practically all New England, isn't it?—A. There is some of New England that does not appear in that.

Q. Where?—A. I don't know as I could be just specific about it, but there is some of the southern part of New England that does not appear in the tariff.

Q. What is your proportion of the rate under that tariff to

10736 those eastern roads?—A. From where?

Q. From Toledo?—A. I don't know that I could tell you. I don't carry that around in my mind.

Q. Find out and tell us your proportion of the rate.—A. How is that?

Q. Find out and tell us your proportion of the rate under that tariff to the points to which you say the Boston rate takes effect, will you?—A. I could, yes.

Q. Very well; will you do it?—A. If it is necessary I can.

Q. It is necessary.

Mr. MARTYN. We object to that as being immaterial and incompetent.

Mr. KELLOGG. Well, I know; but you do not object to its going into the record.

Q. Now, I would like to have you give us a schedule showing the proportion of the Grand Trunk and of the other lines on the oil rates to all points in New England, taking the Boston rates from Toledo.

Mr. MARTYN. Same objection.

A. I shall have to refer you to the superior officers of the Grand Trunk road if you want to get that information.

Q. Haven't you got the division sheets in your office?—A. I may have, but they are not my personal property. They are the property of the Grand Trunk Railway.

Q. Is not your office the proper place for these division sheets?—A. Not altogether, no.

Q. Don't you have charge of the tariffs and division sheets?—A. I have charge of the tariffs; yes.

10737 Q. And division sheets?—A. Not altogether; no.

Q. Well, do you somewhat?—A. To a limited extent; yes.

Q. To what extent?—A. Simply that I keep them there as a matter of record.

Q. They are there, then, in your office?—A. Yes, sir.

Q. And isn't it a part of your business to know about the divisions and to work out the divisions, the same as the tariffs?—A. Not altogether; no, sir.

Q. Isn't it a part of your business?—A. No, sir.

Q. Isn't it any of your business?—A. Some of that, to a limited extent, as I said.

Q. To what extent?—A. Only that I keep them on record, and I know them because I have them there.

Q. Well, you keep these tariffs on record, don't you?—A. Yes.

Q. And you know them because you have them there?—A. Yes, sir.

Q. Now, will you please produce the division sheets showing your divisions to all New England towns where the Boston rate applies?—A. I will, with the consent of my superior officer; yes, sir.

Q. On oil. I want to know whether you will or whether you will not?—A. I will not without his consent.

Q. When will you let us know?—A. I don't know when I can let you know.

Q. Will you let us know to-morrow morning?—A. No, sir; I can not.

Q. Will you let us know Friday morning?—A. No, sir; I

10738 can not, because I don't expect to be here to-morrow morning or Friday morning.

Q. Well, I rather expect you will not get excused until you produce those tariff sheets or division sheets.—A. I have another case before the Interstate Commerce Commission at Saginaw on Friday, and I can't very well be here.

Q. You are here now, and under subpœna, I suppose, aren't you? (No response.)

Q. Now, Mr. Martin, where are those division sheets?—A. Which division sheets do you refer to?

Q. The ones I have been talking about.—A. Well, what ones are those?

Q. Showing the division of the rate between your line and the Boston & Maine and the Maine Central and other New England roads?—A. We have some 25 or 30, I expect.

Q. I want the division of the oil rates under this tariff about which you have been testifying, to New England points taking the Boston rate—the division between your line shipping from Toledo and between the New England lines. Where are they?—A. There are some

of them in Boston, there are some of them in Montreal, there are some of them in my office, there are some of them at various points along our line. There are some of them in the Detroit & Toledo Short Line office at Toledo, I presume, or Detroit.

Q. Now, what ones are in your office? You said you kept them in your office.—A. Which ones do you want?

Q. The division between your company and the Boston & Maine, showing the proportion of the rates accruing to your company
10739 and the proportion accruing to the Boston & Maine, routed in connection with this tariff and the Great Eastern Despatch that you have been testifying about.—A. I may have copies of them in my office. I don't know whether I have got any outside of my file copy or not.

Q. Now, will you tell us what the rate to Rockland, Maine, is?—A. To Rockland, Maine?

Q. Yes; by that tariff and that Great Eastern billing guide [handing witness document].—A. Oh, you mean what the rate was?

Q. What it was, yes.—A. I will try and do so; yes, sir. The rate to Rockland, Maine, would be the same as the rate named in that tariff to Boston—27 cents.

Q. 27 cents. Over what lines would the traffic go?—A. That would move over the Detroit & Toledo Short Line, the Grand Trunk, the Boston & Maine Railroad and the Maine Central Railroad.

Q. Now, will you tell me the proportion—whether those New England lines exact their local rate or whether they take a proportion of the 27-cent rate?

Mr. MILLER. That is objected to.

A. They took their proportion of that 27-cent rate.

Q. Under what division sheets?—A. Under the regular division sheets that we have in effect on all classes of traffic.

Q. What are those divisions?—A. I can't tell you.

Q. Have you got that division sheet?—A. I may have it.

Q. I wish you would produce it to-morrow morning or this afternoon, immediately, I don't care which.

10740 Mr. MILLER. Why, Mr. Kellogg, Mr. Martin says he is called away on business. Now, if it is done at some subsequent time, it will do just as well, won't it?

Mr. KELLOGG. No; I want it now. I can't help it. He has come here to testify. Let us have it here now; unless he will agree definitely to produce it at some subsequent time.

Mr. MILLER. He can agree just as well as he could do it to-morrow morning.

Mr. KELLOGG. I don't know when he is coming back.

Q. Now, Beecher Falls, Vermont, what is the rate to that place?—A. (After consulting document.) The rate would be the same as the Boston rate, 27 cents.

Q. Now what lines did that go over?—A. That would go over the Detroit & Toledo Short Line, the Grand Trunk, the Boston & Maine, and the Maine Central. It may be possible also—I have not just noted the routing there—that the Boston & Maine might not get the haul. It might go direct over the Grand Trunk to the Maine Central. They have various routes that they could use.

Q. What would be the proportion of the Boston & Maine and the Maine Central, or the Maine Central?—A. I can't tell you.

Q. Have you a division sheet showing that?—A. I presume so.

Q. In your office?—A. I assume so.

Q. I wish you would produce that.

Mr. MARTYN. The same objection may go to all of this as immaterial?

Mr. KELLOGG. Yes.

10741 Q. Now, Mr. Martin, is it not a fact that the New England roads notified your company that on petroleum oil they would not prorate?—A. I have no knowledge of it, sir.

Q. Did you get the consent of your traffic manager—who is your superior officer?—A. Mr. John W. Loud is our traffic manager.

Q. John W. Loud; where is he?—A. Yes, sir; of Montreal.

Q. Did you get his consent to come here and testify?—A. No, sir; I did not.

Q. You came here and testified in relation to your tariffs without his consent?—A. I did.

Q. Then why can't you testify in relation to the division sheets withouthis consent?—A. Because I am producing something that is not my property.

Q. Are these tariffs your property any more than the division sheets?—A. No, sir.

Q. Did you give these tariffs to counsel?—A. I don't know whether they were given to them; they were not given to them by me; no, sir.

Q. Does the correspondence with you, between you and the officials, belong to you or belong to the company?—A. It belongs to the company.

Q. This letter which you produce, was that the property of the company or of yourself?—A. That is the property of the company, so to speak.

Q. Did you have the consent of Mr. Loud to produce that?—A. No, sir.

Q. You produced it without his consent?—A. I simply produced it to show the authority for the tariff.

10742 Q. You mean you will produce anything that the defendants want——A. No, sir.

Q. —— but you will not produce anything that the Government wants?—A. No, sir; I do not mean that. I do not want to be misunderstood.

Q. You asked no authority to produce that?—A. No; because that is authority for a tariff. The tariff is in itself public property. The divisions of rates are not public property.

Q. You never heard that the New England roads refused to prorate, I suppose, on oil?—A. I have—I did not say that I never heard that.

Q. Well, have you heard it?—A. I have heard indirectly that some of the New England roads, via certain gateways, under certain conditions, refused to prorate on oil.

Q. What New England roads via what gateways and under what conditions?—A. I can't be specific, because I don't recall.

Q. Isn't it a fact that the Boston & Maine and the Maine Central refused, except on the Fitchburg division of the Boston & Maine?—A. I don't know. I couldn't tell you, sir.

Q. Have you heard that they did?—A. I don't know that I heard it specifically.

Q. Were any shipments ever made by the Grand Trunk road under this rate?—A. I couldn't say. I have nothing to do with the shipping of traffic at all.

Q. Is there a record of the traffic shipments in your office here in Chicago?—A. No, sir.

Q. Where are they kept?—A. I presume in Toledo, or in our audit office at Montreal.

10743 Q. Does any other line make a like rate to these towns?—A. I could not say.

Q. You are not familiar with them?—A. No, sir.

Q. Don't you keep posted as to the tariffs of other lines of road, your competitors?—A. You mean other railroads?

Q. Yes; your competitors.—A. We do in a general way; yes.

Q. You do in a concrete and particular way sometimes, don't you?—A. Sometimes; yes.

Q. It is necessary that you should keep track of the rates over the lines of your competitors into the same territory, is it not, in your business?—A. Not altogether, for my purpose.

Q. Well, not altogether—to what extent is it?—A. For me to keep track of them?

Q. Yes.—A. I don't know as it is necessary for me to do it at all.

Q. And so you don't do it?—A. In some cases I do. I have knowledge of it in some instances.

Q. What are the competing lines of your company to New England on the petroleum traffic from Toledo?—A. The Lake Shore, the Pennsylvania Company, the Michigan Central.

Q. Do any of those companies make the Boston rate to any of these places?—A. I think they do.

Q. Name the tariff by which they do.—A. I could not. I don't know positively.

Q. Have you ever seen one that did?—A. I have.

Q. Well, you say now, but did they at that time, during 1903 and 1904?—A. I said I think they did.

Q. To all of these places?—A. I could not say as to how

10744 many of them.

Q. What basis is there for your thought?—A. I have seen tariffs of the Lake Shore Railroad that named rates to eastern basing points, similar to the one that was issued there.

Q. Oh, to the basing point, to Boston of course.—A. Yes, sir.

Q. But to the New England points outside of Boston?—A. I could not say specifically as to that.

Q. You have never seen any tariff, have you, naming the Boston rate on petroleum oil to any points on the Boston & Maine or Maine Central roads other than the Fitchburg division?—A. I would not like to say that without verifying myself as to the actual facts.

Q. Can you name a tariff rate that you ever saw, prior to 1906, on any one of those roads, giving the Boston rate to towns outside that I named?—A. I don't have any doubt but what I might produce such tariff if I had time to dig into it, although I am not able to state here at this time.

Q. Wasn't it your understanding that they didn't make such rates generally?—A. No, I would not say so.

Q. Why not?—A. Because of the fact that that tariff was built on the same lines as some other tariffs that were then in effect.

Q. Will you produce one that shows that it was built on that line?—A. I don't know whether I could or not.

Q. I don't think you can. Now will you tell me what there is in this letter that authorized you to make the Boston rates to any other town? All it says is, "You will kindly arrange to
10745 publish tariff on petroleum and its products in carloads from Toledo to eastern U. S. points and to Montreal for export as soon as possible. Advise." Is there anything in there that authorizes you to make the Boston rate to all those towns?—A. I took it as such.

Q. You did?—A. Because that is the general way in which we handled those matters.

Q. It is?—A. The term "eastern U. S. points" embraced the eastern basing points.

Q. Has it always embraced those on oil, throughout New England, as you understand?—A. That is the only instance that I have of it. It is the only oil tariff I have issued to that territory.

Q. And you don't know that any shipments were ever made under it?—A. I do not.

Q. Or that you ever quoted a rate?—A. Because I have nothing to do with the shipments after the tariffs are issued.

Q. Now you don't know, you can't tell us, then, anything about what division on the petroleum traffic your company got of the rates to any of these points?—A. It would be just exactly the same division as we would get on groceries or anything else.

Q. But do you know that they got those divisions?—A. I couldn't tell you, because I didn't see the billing. I couldn't say.

Q. Don't you know that they were notified, with all other lines, that they would not prorate on oil?—A. No, sir, I do not.

Q. You don't know that they were not——A. No, sir, I do not.

Q. ——so notified? Will you tell me what this clause
10746 means in this billing book: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested"?—A. I can tell you to the best of my knowledge, yes, sir.

Q. What does it mean?—A. That at that time and for years previous petroleum and its products had not been included in the official classification. There was no rating provided for it in tank cars. The classification stated specifically to see special tariffs. The basis for rates on petroleum and its products not being provided in the classification, must of necessity have been created by a special tariff. Therefore the book, simply being a guide reference to our agents, could not be used as a rate sheet without a rate sheet to guide the agent as to what rate to apply, and the note so states. It says it will be subject to special tariffs.

Q. But you don't pretend to say that this Great Eastern billing book applies alone to classifications——A. Not altogether.

Q. ——to class rates?—A. No, sir, I don't attempt to say so.

Q. It applies to commodity rates and class rates both, doesn't it?—A. Yes, sir, it does.

Q. It does not say that the class rates shall not apply to petroleum; it says that petroleum shall not be taken under the instructions of this guide at all.

Mr. MILLER. Oh, no; not at all.

WITNESS. It says "See special tariffs."

Q. Yes. That is, there has got to be a special tariff naming
10747 the rate?—A. Yes, sir.

Q. You can not go to this book to find your rate for petroleum.

Mr. MARTYN. Or any other rate.

A. That book does not name rates. It does not publish any rate to any place. It is simply a basing book.

Q. Now, the same thing is true of any commodity. You have got to have a special tariff to show it, haven't you?—A. You have.

Q. So this does not name any rates at all?—A. No, sir; it does not name any rates, as I stated. It is simply a guide.

Q. And it has no effect without a tariff?—A. No, sir.

Q. Then with a general tariff naming rates, petroleum would not be included, would it?—A. No, sir; because petroleum was not classified.

Q. With a general commodity tariff petroleum would not be applied?—A. The general commodity tariffs were included in the regular list of tariffs.

Q. With the understanding that I do not want you to be considered excused until you produce those division sheets so that I can further cross-examine you, that is all I wish to ask you at present.—A. When do you wish to cross-examine me?

Q. The moment you produce those division sheets.

Mr. MARTYN. That is all, Mr. Martin.

Q. Wait a moment. Have you had any correspondence with the Boston & Maine, or is there any correspondence in your office, or with the Maine Central, in regard to the subject of prorating on oil?—A. No, sir; there is not.

10748 Q. No notice to you or circular sent to you?—A. No, sir.

Q. None that you have seen at all?—A. None that I have any official knowledge of, or personal knowledge as far as that goes.

Q. None received during 1906?—A. No, sir.

Mr. MARTYN. I want to interpose an objection, that there is nothing in this record or otherwise, so far as we are aware, that indicates that there ever was any request from those roads to anybody not to prorate on oil.

Mr. KELLOGG. The testimony shows conclusively that they never did prorate until after 1906.

Mr. MARTYN. But there is no statement showing any refusal on the part of any of those roads ever to prorate.

Mr. KELLOGG. That is all at present. I wish to further cross-examine you as soon as you produce those division sheets.

10749 F. J. SHUBERT, called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Your full name?—A. Frank J. Shubert.

Q. Where do you reside?—A. Chicago.

Q. You are connected with the Rock Island Railroad?—A. Yes, sir.

Q. In what capacity?—A. Assistant general freight agent.

Q. How long have you held that office?—A. About nine years?

Q. How long a railroad experience have you had?—A. 26 years.

Q. Entirely with the Rock Island Railroad?—A. The Rock Island and the western extension, the Chicago, Kansas & Nebraska, which was formed by the Rock Island and afterwards absorbed by the Rock Island.

Q. What position did you have before you held your present position?—A. Chief clerk of the general freight office of the lines west of the Missouri River.

Q. For how long a time?—A. For three or four years.

Q. At that time you were located where?—A. Topeka, Kansas.

Q. What other positions have you held?—A. Prior to that I was chief tariff clerk, having charge of the tariffs of the C., R. I. & P. west of the Missouri River.

Q. Your entire experience has been in the freight department?—A. It has.

10750 Q. You are familiar with freight tariffs generally?—A. I feel I am.

Q. You have interpreted tariffs, and quoted from them?—A. For years; yes, sir.

Q. And have constructed tariffs?—A. I have.

Q. Does the construction of tariffs for the Rock Island road come now within your jurisdiction?—A. It does.

Q. So you now have charge, practically, of the issuance of tariffs for the Rock Island system?—A. Yes, sir.

Q. You have also been familiar with quoting rates to shippers?—A. Yes, sir. Prior to being chief tariff clerk I was rate clerk in the general freight office of the lines west of the Missouri River for about three years, and in that position I quoted all the rates given out by the general freight office.

Q. Going back to the time prior to the enactment of the present interstate commerce law, commonly known as the Hepburn law, and, say, prior to October 1, 1905, what was the custom of railroads with regard to the use of the sum of the locals where that was less than the through rate, or where there was no through rate?—A. So far as our line was concerned, we invariably applied the sum of the locals, giving all shippers the benefit of the combination of the locals when less than the published through rate.

Q. What was the custom of railroads with regard to filing with *with* the Interstate Commerce Commission tariffs naming rates merely between points in the same State?

Mr. KELLOGG. All of this is objected to as incompetent, irrelevant, and immaterial, and all of these questions may be taken subject to objections the same as in the previous cases.

Mr. MARTYN. Yes.

Mr. KELLOGG. Without repeating the objection to each question.

Mr. MARTYN. It is so understood.

10751 Mr. MILLER. I would like to interrupt the testimony of this witness to say that Mr. Martin, who has just left the stand, tells me that he has been here served with a subpœna, which I take it my Bro. Morrison has just gone out and gotten while Mr. Martin was here, which subpœna Mr. Martin has given me, and which is issued by the clerk of the circuit court of this district, to appear before this examiner, Judge Ferriss, at this room, forthwith, to testify on behalf of the petitioner, the United States, in this case. Mr. Martin is here. Now, I think it is only fair to Mr. Martin, and certainly I submit is the only fair thing for the United States of America, to put him on, if they have the right to put him on, now that they have subpœnaed him, or to arrange to let him go about his business if they do not want him. They can not put witnesses on now, during our examination. Counsel know that until the first of December the taking of this testimony for the defendants will be going on. Following that, the Government will have a period of time in which to introduce rebuttal evidence, and it is altogether beside this case, as well as unprecedented, for the Government to subpœna a witness to appear here now who is already here, and that to testify on behalf of the Government, when they could not put the witness on, in the due course of proceedings at all. I think counsel for the Government are called upon in all fairness, either to explain

this thing or withdraw this subpœna and let Mr. Martin go about his business until he is needed.

Mr. KELLOGG. I will explain it. Frequently, several times
10752 during this taking of testimony by the defendants, and once that I remember particularly with Mr. Collings, a Standard Oil official of Cincinnati, we were forced to get a subpœna to compel Mr. Collings to produce letters needed on cross-examination, as there was no power in the examiner to compel a witness to produce anything. Mr. Martin was here. I asked him if he was subpœnaed, and he did not answer. He was about to leave, against my protest, and I desire Mr. Martin to produce the documents which we have asked for, as a part of his cross-examination; and in order to insure his presence I have subpœnaed him, as I have a perfect right to do, now or at any time during the taking of the testimony of witnesses. When Mr. Martin either produces, or is willing to arrange that the Grand Trunk road will furnish us the information, he may go; but the only information we can get out of the roads is to force it out, and we will force it out of them if we can not get it any other way.

Mr. MILLER. I submit that this is entirely uncalled for on the part of counsel, and it is also inaccurate.

Mr. KELLOGG. It is not.

Mr. MILLER. In the first place, Mr. Martin is not subpœnaed to produce papers here. The case is not at all like that of Mr. Collings. He is subpœnaed to be here personally, at a time when he is here. It is not true that Mr. Martin has left against the counsel's protest, because the counsel had gotten through with his cross-examination until Mr. Martin should produce certain documents which he would have to leave here in order to produce.

Mr. KELLOGG. Well, I do not mean leave the room, Mr. Miller.

10753 Mr. MILLER. Now, I want the reporter to read the very last portion of Mr. Martin's testimony on cross-examination, to see whether there was any protest on his leaving.

Mr. KELLOGG. I do not mean to protest against his leaving the room. I mean leaving the city.

Mr. MILLER. That is what was said; that he was about to leave, over counsel's protest.

Mr. KELLOGG. Leave the city.

Mr. MILLER. He has told counsel that some of those papers are in Toledo or in Montreal, and not here, but he has a right to leave the city.

Mr. KELLOGG. The papers I want are in the city.

Mr. MILLER. There is no object that the counsel for the Government can have in keeping the witness in the city all the time.

The EXAMINER. This subpœna does not call for any papers, does it?

Mr. KELLOGG. No; but I will get one that does.

Mr. MILLER. Not at all. Now the witness is here. Let counsel determine what they will do with him.

Mr. KELLOGG. If the witness will agree to return here at some date that we can agree on, and produce those papers, he may go out of the city or any place he pleases.

Mr. MILLER. I suggested to the counsel before that he agree to let Mr. Martin go, to come back at some time. Of course Mr. Martin will come here or anywhere else that he is wanted.

10754 The EXAMINER. I do not see any difficulty about the matter.

Mr. MILLER. Not at all. I made that suggestion. The witness has disclosed that on Friday he has an important case or matter before the Interstate Commerce Commission that requires his attendance elsewhere than in Chicago. We are going on with this examination——

Mr. KELLOGG. Not here.

Mr. MILLER——for a month. Mr. Martin will appear in New York if needed.

Mr. KELLOGG. Very well; that is all right. If Mr. Martin will appear in New York and bring those papers——

Mr. MILLER. Yes. Whether he can bring the papers or not will depend on whether he can find them or not. He has stated to Mr. Kellogg what he will undertake to do, and he can appear in New York; or if he gets around with that before we get through here he can appear here. Now is that satisfactory to counsel?

Mr. KELLOGG. Yes; if he will appear. If Mr. Martin will state that he will appear in New York whenever we want him and produce those papers, that is entirely satisfactory.

Mr. MARTIN. What is the point, gentlemen?

Mr. KELLOGG. I say, if you will appear in New York at a date to be agreed upon, or any day we name, and produce those papers, I am perfectly willing you should go.

Mr. MARTIN. Will you kindly advise me just what papers you want?

Mr. KELLOGG. I want the division sheets. I believe I advised

10755 you pretty carefully, Mr. Martin, what I wanted. I want the percentage divisions between the Grand Trunk and the New England lines on shipments of petroleum oil after December, 1904, and prior, say, to July, 1906, showing the divisions between your line and the New England roads to points in New England, taking the Boston rate.

Mr. MARTIN. Covered by our line?

Mr. KELLOGG. Yes; and the percentage that you actually received on those shipments. If you will work that information up for us and furnish it in New York I am perfectly willing you should go.

Mr. MARTIN. I think, as far as that is concerned, you have a gentleman on your side of the house—an old-time friend of mine, Mr. Schindler—who will advise you that if I undertake to do it it will be done. I am not seeking to evade anything at all. There is not any disposition of that kind on my part.

Mr. KELLOGG. All right; if you will do that.

Mr. MILLER. He has not done it here, and there has not been the least shadow of appearance of that.

Mr. KELLOGG. If you are willing to do that; I understood you on the stand that you declined to do that.

Mr. MARTIN. No, sir; I beg to differ with you. I did not decline.

Mr. KELLOGG. All right, if you are willing to do that we will notify you when you are to appear.

Mr. MARTIN. I simply said I wanted to consult my superior officers.

Mr. KELLOGG. If your superior officers decline to produce
10756 them, then you won't do it?

Mr. MARTIN. Then, you can get hold of them, can't you.

Mr. KELLOGG. Oh, if they are inside of this country, but if they are in Montreal, I don't know whether I can or not. That is a question.

Mr. MARTIN. Well, I will state that I shall undertake to do the best I can to satisfy you.

Mr. KELLOGG. When do you want to leave the city—to-morrow morning?

Mr. MARTIN. I am going away to-night.

Mr. KELLOGG. Are you willing that Mr. Schindler go with you now and look those over?

Mr. MARTIN. I am, although I am not going to my office now. If he will come there later, it will satisfy me a great deal better. I have got an engagement now.

Mr. KELLOGG. What time?

Mr. MARTIN. If he will come over there at 5 o'clock, I will be glad to give Mr. Schindler the information.

Mr. KELLOGG. Now, if this gentleman should go out of town, Mr. Martin, who is your officer there who can act in his place?

Mr. MARTIN. I will let you, Mr. Schindler, take a copy of the figures if you want them.

Mr. SCHINDLER. I will arrange that with you.

Mr. KELLOGG. Under that understanding, Mr. Martin may go. You can arrange the hour when you will go.

Mr. SCHINDLER. I will arrange so that I can see them to-morrow.

Mr. MILLER. Mr. Schindler has already been over there and
10757 got the information that he asked for, and there has not been any subpœna necessary to hector a man in order to get that. I think this is an unprecedented way of doing things.

Mr. KELLOGG. I never heard of it being unprecedented to subpœna a witness to get information that I wanted.

Mr. MILLER. To subpœna a witness to appear forthwith, when you could put him on the witness stand when he is here. It is a practice I am not familiar with.

Mr. KELLOGG. Well, it produced the desired result.

Mr. MILLER. You did not need it to get the results. You have not gotten them any more promptly.

Mr. KELLOGG. Go ahead.

The EXAMINER. That incident seems to be closed. We will proceed now.

(The last question was read by the reporter, as follows: "Q. What was the custom of railroads with regard to filing with the Interstate Commerce Commission tariffs naming rates merely between points in the same State?")

A. The practice with the C., R. I. & P. was not to file such tariffs, and I believe that was likewise the practice of other lines, but I am not sure.

Q. Now, in obtaining the lowest sum of locals that could be made, if the use of such an unfiled State tariff were available to make the lowest combination, would that be used?—A. It was used at that time, prior to the new order of things, you might say.

10758 Q. And would that be used regardless of the fact that the shipment came from or was going to another State?—A. Regardless of the point of origin or destination.

Q. Was that practice the same as to all shippers?—A. All alike.

Q. And as to all classes of freight?—A. All classes.

Q. Are you familiar with what is commonly known as the Chicago switching district?—A. Quite familiar.

Q. Do you know what has been the custom of roads leading out of Chicago for a good many years with regard to the application of Chicago rates to points in the Chicago switching district?—A. I think so.

Q. What has been the custom?—A. They took care of the rates by issuing application sheets. They did not publish the rates outright from these points, but published a tariff to and from Chicago, and then by the application sheets stated that the Chicago rates, with certain restrictions, would apply to and from these Chicago suburban points.

Q. And back, say, in the years 1902, 1903, 1904, and 1905, was it the common custom to apply, by means of such application sheets, the rates from Chicago to points in the Chicago switching district?—A. It was.

Q. In so applying Chicago rates was it the custom to apply rates from Chicago to other points in Illinois to all points in the switching district, including Whiting and Hammond and other points in Indiana?—A. I don't quite get the drift of that. What is the question, please?

(The reporter read the question.)

10759 Q. If that is not clear, I will make a concrete illustration. If you had, for example, a rate from Chicago to Peoria or East St. Louis, was that applied to points in the Chicago switching district?—A. It was applied the same as from Chicago, with certain restrictions.

Q. And that rate being between points in the same State, would not commonly be filed with the Interstate Commerce Commission?—

A. It was not, unless there were some interstate rates also in that tariff.

Q. In which case it was filed with the Commission because of the interstate rate?—A. Yes, sir.

Q. I show you a copy of Chicago & St. Louis Traffic Association Tariff No. 24, its I. C. C. No. 3, and two copies of the Railway and Warehouse Commissioners' Revised Schedule of Reasonable Maximum Rates and Charges, etc., in the State of Illinois, including the classification of freight, one effective July 1, 1895, and the other January 1, 1900. I also show you copy of the Chicago & Alton Railway Company's tariff, I. C. C. 981; a copy of the same railway company's tariff, I. C. C. 1203, canceling the last-named tariff, this tariff being effective June 9, 1903, and a copy of the same railway company's tariff, I. C. C. 1407, effective July 18, 1904, canceling I. C. C. 1203. I also show you a copy of Chicago & Alton Railway Company's tariff, G. F. D. 10525, effective August 15, 1903, but not filed with the Interstate Commerce Commission until December 21, 1905. I also show you a copy of petitioner's Exhibit 552, being Chicago & Alton Railway Company's tariff, Special G. F. D. No. A-209, effective January 1, 1903, and the same railway company's tariff, Special G. F. D. No. A-447, effective January 1, 1904. I ask you to

10760 examine all of these documents and state whether or not from these papers you could have quoted a rate on petroleum and its products in carloads from Whiting, Indiana, to East St. Louis, Illinois, in the years 1903 and 1904, and, if so, what you would have quoted as the lawful rate? You may assume that none of the supplements to any of the tariffs shown you in any way affected the rates shown in the tariffs themselves.—A. I can quote a rate, and I would quote 6 cents per 100 pounds.

Q. You understand in making this answer that the Chicago & Alton Railway Company's tariffs naming the 6-cent rate were not filed with the Interstate Commerce Commission?—A. I do.

Q. I again call your attention to Chicago and St. Louis Traffic Association Tariff No. 24, and the two copies of classification to which I previously called your attention, and also show you a copy of the tariff of the Chicago, Burlington & Quincy Railroad, its I. C. C. No. 4721, effective December 28, 1903, and also Amendment 3½ to the same tariff, filed with the Interstate Commerce Commission April 28, 1904, and I call your attention to the fact that this amendment included a large number of the numbers of other tariffs as Chicago and St. Louis Traffic Association 3, and also C., B. & Q., I. C. C. No. 4234. I call your attention to Chicago, Burlington & Quincy I. C. C. No. 4234, which I show you, marked "Defendants' Exhibit 158-A," and also Supplement 2 to the last named tariff, effective February 8, 1904. That is, the supplement is effective on that date; and I call your attention to the fact that tariff 1059 is there listed in connection with the words "Chicago-East St. Louis." I now show you

10761 Chicago, Burlington & Quincy G. F. O. No. 1059, effective January 1, 1904, which tariff bears no I. C. C. number. I also

show you copy of Chicago, Burlington & Quincy Railroad tariff, G. F. O. No. 1247, effective January 10, 1896, but not filed with the Interstate Commerce Commission until April 4, 1904, and I call your attention to the words "See special tariff" on various pages of this last-named tariff, and particularly to those words on the last page thereof, in connection with the words "East St. Louis" under the column headed "From Chicago to." I ask you to examine the tariffs so shown you, and to state from such examination whether or not you could, in the year 1904, have quoted a rate on petroleum and its products in carloads, from Whiting, Indiana, to East St. Louis, Illinois, and if so what you would have quoted as the lawful rate?—A. Was there anything canceling 1059 during the year 1904?

Q. You may assume that that remained in effect during that year.—A. I would quote 6 cents.

Q. I show you a copy of Pennsylvania Railroad Company Tariff, I. C. C. S-459, and call your attention to the language upon the first page of this tariff "Route in accordance with agreed percentages and as designated within." I also call your attention to the third page of the tariff, and to the language at the bottom of that page under the words "Stations on Rome, Watertown & Ogdensburg division, N. Y. C. & H. R. R. R.:" "Route in accordance with agreed percentages." Could you in the absence of a percentage sheet quote a rate on petroleum and its products, carloads, from Olean, New York, to Norwood, New York, via Rochester?—A. I could quote the rate,

but I could not quote the route, and I would have to ask for
10762 instructions as to the routing, in the absence of the percentages.

Q. I show you defendants' Exhibit 114-A, being percentage sheet No. 221, and also defendants' Exhibit 114-B, being percentage sheet No. 39, which states that it cancels W. N. Y. & P. R. R. percentage sheet 221, and ask you if from an examination of those documents you find by what route the tariff first shown you makes a rate from Olean, New York, to Norwood, New York?—A. Under 221 the routing is via Buffalo and Charlotte. Under the superseding issue, No. 39, the routing is via East Buffalo.

Q. Now, with a tariff stating that there is a rate over route in accordance with the agreed percentages, and with percentage sheets showing a route only via Buffalo, and not showing a route via Rochester, what do you say as to whether or not those documents make a rate from Olean via Rochester to Norwood?—A. They do not name a rate via Rochester.

Q. In connection with the three papers last shown you, I show you also a copy of Pennsylvania Railroad Company's tariff, G. F. D. 114, dated October 8, 1903, naming a rate between Olean and Rochester, New York, of 9 cents per barrel; a copy of petitioner's Exhibit 612, being New York Central & Hudson River Railroad Company tariff entitled "Rate order No. W. K. 201, naming a rate from Rochester to Norwood when for Rutland R. R. points and beyond, of 9 cents per 100 pounds. I also show you a copy of Central Vermont Railroad

Interstate Freight tariff No. Y–5, effective July 11, 1893, naming a rate on oil in tank cars from Norwood, New York, to Burlington, Vermont, of $23 per car, and I show you also Rutland Rail-
10763 road Company tariff, I. C. C. No. 1436, purporting to cancel the tariff first mentioned, such cancellation being effective December 6, 1905, showing that Tariff Y–5 remained in effect until December 6, 1905. I also show you Western New York & Pennsylvania Railroad Company Local Freight Tariff, I. C. C. 161, making a 5th-class rate between Olean and Rochester, New York, of 9 cents per 100 pounds, and I show you Pennsylvania Railroad Company tariffs, I. C. C. 1977 and 2244, entitled "Exceptions to official classification;" and I call your attention to the language on the sixth page, putting petroleum and its products in the 5th class when rating is not provided for in special freight tariffs. I also show you a copy of Rutland Railroad Company Local Freight Tariff, I. C. C. 421, naming a 3rd-class rate between Norwood, New York, and Burlington, Vermont, of 33 cents per hundred pounds, and ask you to assume that the exceptions to the official classification of the Rutland Railroad Company put oil in carloads in 3rd class; and I ask you, from an examination of all those documents, and upon the assumption mentioned, if in the year 1904 you could have quoted a rate on petroleum and its products in tank cars, carloads, from Olean via Rochester and Norwood, New York, to Burlington, Vermont, and if so, what you would have quoted as the lawful rate of rates?—A. I would quote the combined locals; that would be the 9-cent per barrel rate from Olean to Rochester, plus the rate of 9 cents per 100 pounds from Rochester to Norwood, plus a rate of $23 per car from Norwood to Burlington.

10764 Q. I show you a copy of Central Vermont Railway Company Tariff, I. C. C. No. A–336, effective July 1, 1899, naming a rate on petroleum oil and its products, in carloads, from New London, Connecticut, to Burlington, Vermont, of 12 cents per hundred pounds. I also show you a copy of petitioner's Exhibit 660–I, the same being Central Vermont Railway Company Tariff, G. F. D. 702, purporting to name rates from Burlington, Vermont, to Montpelier, Bethel, and other points in Vermont, the rate to Montpelier being $36 per car and the rate to Bethel being $35 per car. I ask you to assume that there was a tariff of the Central Vermont Railway filed with the Interstate Commerce Commission naming class rates from New London to Montpelier and Bethel which were greater than the sum of the two rates named in the tariff shown you. From an examination of these papers and from such assumption, could you, in the year 1904, assuming that the tariff shown you, or subsequent issues naming the same rates, was still in effect, have named a rate on petroleum and its products, in carloads, from New London, Connecticut, to Montpelier and Bethel, Vermont, and, if so, state what such rate was.—A. I would name the sum of the locals through Burlington if less than the published through rate.

Q. Now, if you had quoted and considered the sum of the locals as the lawful rate, would you have considered that it was unusual or wrong or illegal for the car to have been consigned from New London to Bethel or Montpelier and the railroad company to have charged and collected the sum of the locals into Burlington and back to
10765 those points, Bethel being intermediate between Burlington and New London and Montpelier, being a short distance off the main line but a considerable distance south of Burlington?—A. Not at that period.

Q. I show you a copy of petitioner's Exhibit 592, the same being Missouri Pacific Railway Company's Tariff I. C. C. 535, naming a rate from St. Louis, Missouri, to Alexandria, Louisiana, on petroleum oil and its products, of 25 cents per hundred pounds, effective July 16, 1896; also a copy of the same railway company's tariff, I. C. C. 6848, canceling I. C. C. 535, effective August 17, 1904, continuing the same rate. I also show you a copy of Missouri Pacific Railway Company's Tariff I. C. C. 1744, effective August 10, 1897, and I call your attention to the rate on oil, petroleum, C. L., named on page 5 of the tariff between St. Louis and other points and Alexandria, Louisiana, and other points, of 30 cents per 100 pounds, and I call your attention to the fact that this last named tariff purports to cancel various tariffs not including the one first shown you. I ask you whether, from those two documents, in the years 1903 and 1904, you could have quoted a rate on petroleum and its products, carloads, from St. Louis, Missouri, to Alexandria, Louisiana, and, if so, what you would have quoted as the lawful rate?—A. I would have quoted the 25-cent rate.

Q. I also show you a copy of petitioner's Exhibit 596, being Missouri Pacific Railway Company's Tariff I. C. C. 830, applying on petroleum oil and its products, from St. Louis, Missouri, to Alexandria, Louisiana, naming a rate of 15 cents per 100 pounds, with the statement that the above rate applies only on shipments destined to points in Louisiana on Southern Pacific Company, except
10766 stations on joint track between Alexandria and Cheneyville. I also show you a copy of petitioner's Exhibit 597, being Morgan's Louisiana & Texas Railroad & Steamship Company Tariff No. 1952, dated October 9, 1901, stated to be effective at once, and naming a rate from Alexandria, Louisiana, to various points, including New Iberia, of 16 cents per 100 pounds. Also the same railway company's tariff No. 2234, naming a rate on oil, carloads, from Alexandria, Louisiana, to Crowley, Louisiana, in tank cars, of 19 cents per 100 pounds. I also show you a copy of the tariff entitled "Through Freight Tariff No. 16-F," bearing I. C. C. No. 168, applying on classes and commodities, from sundry points named, including St. Louis, Missouri, to stations in Louisiana on Southern Pacific Company's Atlantic System and other railroads named; and I call your attention to the rate purporting to be made on page 5, from St. Louis and other points, to New Iberia, on petroleum oil, carloads, 38 cents per 100 pounds; and also the rate to Crowley, purporting to be

shown on page 11 of the tariff, from St. Louis and other points to Crowley, 40 cents per 100 pounds. I ask you to examine these documents and state what rate you would have quoted as the lawful rate for the transportation of petroleum and its products, in carloads, from St. Louis, Missouri, to Crowley, Louisiana, and New Iberia, Louisiana, during the time the tariffs shown you purport to have been in effect or were in effect, assuming that the rates shown in Tariff No. 16–F were in effect either from this tariff or subsequent issues thereof?—A. As the combination of the locals through Alexandria was less than the published through rate, we would quote the lower basis, which is the combination of the locals, being 31
10767 cents to New Iberia and 34 cents to Crowlew.

Q. And you would quote that combination, although the two Louisiana State tariffs do not purport to be filed with the Commission, but show the evidence of being filed with the Louisiana Commission?—A. I would; yes, sir.

Q. I show you copy of Santa Fe System Tariff No. 5821, effective January 29, 1902, purporting to have been filed with the Interstate Commerce Commission, and purporting to name a 5th-class rate between Los Angeles and Redondo, California, of 25 cents per 100 pounds, with the statement upon the face of the tariff that it is governed by the Western Classification, and I ask you to assume that that classification classified oil as 5th class.—A. 5th-class rate of 25 cents?

Q. Yes. I also show Santa Fe System Tariff I. C. C. No. 1381, effective February 20, 1904, and I call your attention to page 9, purporting to name a rate between Redondo, California, and Los Angeles and intermediate points, on crude oil, in tank cars, C. L., of 10 cents per barrel. I also show you a copy of petitioner's Exhibit 669, and ask you to assume that Edward Chambers, whose name purports to be signed at the bottom of this paper, was at that time general freight agent of the Santa Fe Railroad in California. I ask you, from an examination of those documents, what you would have named, during the time petitioner's Exhibit 669 may have been in effect, as the lawful rate between Redondo and Los Angeles on commodities there mentioned going from Redondo to points on the Southern Pacific Railroad in Arizona? You may assume that there was no joint through tariff of the Santa Fe road and the Southern
10768 Pacific road from Redondo to points on the Southern Pacific Railroad in Arizona.—A. I would apply the 7½-cent rate from Redondo to Los Angeles, whether destined there locally or destined beyond.

Q. If the agent at Los Angeles had collected 10 cents per barrel, or a higher rate than 7½ cents a barrel, and thereafter, within a reasonable time, a shipper had made a claim for overcharge, would you have authorized the allowance of such claim?—A. I would.

Q. I show you copy of Grand Trunk Railway System Tariff I. C. C. A–944, otherwise identified as defendants' Exhibit 124–A; and ask you to examine this tariff and state whether or not it names

a rate on petroleum products, carloads, from Toledo, Ohio, to Boston, Massachusetts?—A. It does.

Q. What rate do you find?—A. 27 cents per 100 pounds.

Q. At the top of the second page of the tariff a number of points are specifically named. What are such points commonly called, if you know? Do you consider those as what are commonly known as basing points?—A. Basing points and eastern seaboard points.

Q. Do you find any reference under that list of names to a further list of stations to which the list applies?—A. I do.

Q. To what does that refer?—A. It says, "For list of stations to which the above rates apply, see various fast freight line billing instructions."

Q. Looking on the first page of the tariff, do you find a reference to the National Despatch-Great Eastern Line, among others?—A. Yes, sir.

Q. I show you a copy of defendants' Exhibit 124–B,
10769 entitled "National Despatch-Great Eastern Line. Shippers' and Agents' Guide No. 9." Assuming that this No. 9 was still in effect at the date of that tariff, would you understand this to be one of the guides there referred to?—A. I would.

Q. Will you please examine that guide and state whether or not the tariff and the guide together make a rate on petroleum and its products, in carloads, from Toledo, Ohio, to Burlington, Vermont, and, if so, what rate you find?—A. Do I have to look through here to find all exceptions or can it be stated to me that there are exceptions?

Q. I call your attention to the third paragraph on the first page, page numbered 1, and call your attention to the fact that the guide is dated January 1, 1903, and that the paragraph on page numbered 1, to which I call your attention, contains the language "will be subject to special tariffs and local regulations of railroads interested."—A. I should say that the Boston rate applies under this guidebook to Burlington.

Q. And that the rate from Toledo, Ohio, to Burlington, Vermont, would be 27 cents per 100 pounds?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Mr. Shubert, do you know whether the New England roads prorated on oil rates?—A. I haven't any knowledge on the subject whatever.

Q. You don't know anything about it?—A. Not a thing.

Q. You don't know whether the Lake Shore or the Michigan Central, or any of the other lines, made Boston rates to any towns in New England?—A. None other than their tariffs would show.

10770 Q. But the tariffs show that they didn't, don't they?—A. This tariff I just looked at names the Boston rate to Burlington, Vermont.

Q. I am talking about the Lake Shore road——A. I don't know anything about the Lake Shore road.

Q.——and the Michigan Central road and the Pennsylvania road. Did any one of those roads make the Boston rate on oil to any of the New England towns?—A. I have not the slightest knowledge of whether they did or did not.

Q. So you don't know whether under this tariff the New England roads demanded their full local rates or whether they didn't?—A. No, sir.

Q. And you don't know whether anybody ever did or ever could ship a carload of oil under the rate that you name?—A. The tariff authorizes it.

Q. So far as the Grand Trunk is concerned.—A. They would protect it.

Q. That is, if they did protect it?—A. I can't see how they could do anything else. They have advertised that fact in their tariff.

Q. That is your construction, that they have advertised it?—A. They would have to protect it; they could not afford not to.

Q. That is if your construction is correct, you think they would have to protect the rate?—A. I do.

Q. Now, you are an expert. If they had to pay their local rates, where the local rates in New England would be practically as much as the 27 cents, you don't think they would protect it a great
10771 while, do you?—A. I don't know. Policy cuts some figure.

Q. Well, it would not be their policy to haul it from Toledo to a connection with the Boston & Maine Railroad for nothing, would it?—A. I am sure I don't know what their policy is.

Q. Now, let us see something that you know more about. You say it was the custom prior to 1906 for the Rock Island road to make through shipments on interstate business on local tariffs that were not filed with the Commission. Is that what you mean?—A. I say that we gave every one the benefit of the combination of locals when less than the published through rate.

Q. Whether the business was interstate business or not?—A. Whether it was interstate or not.

Q. Now, instead of naming every one, name one that you did.—A. I can not name any one in particular. That was the custom.

Q. Name any one tariff that you ever used in that way.—A. Well, for instance, if a line——

Q. From what?—A. If a line——

Q. No, I want to know what you did.—A. Just a minute. I am trying to answer your question if you will give me half a chance.

Q. All right, I will give you all the chance you want.—A. If a line brought a shipment from an interstate point into the State of Kansas and gave us that shipment at a junction point in the State of Kansas, destined to a point on our line in Kansas, and the movement over our line was not interstate, we applied on that shipment the Kansas distance tariff, which was not filed with the Interstate Commerce Commission.

Q. Certainly you did, if the movement was not interstate.—
10772 A. It was interstate. It came from without the State and was delivered to us at a junction within the State; therefore it was an interstate shipment.

Q. It was reconsigned on your road, wasn't it?—A. I did not say reconsigned.

Q. What?—A. No, sir.

Q. Were not such shipments as that reconsigned at your junction points?—A. No, sir.

Q. They were not?—A. They were consigned through from a point outside of the State of Kansas to a point on our line in Kansas.

Q. Where are these consignments or bills of lading or waybills that show that kept?—A. I suppose they are in the records of the Rock Island road.

Q. Will you produce one showing such a shipment as that on a through bill of lading?—A. It is not under my jurisdiction. I could not produce it.

Q. You can't produce it?—A. No, sir.

Q. Your Kansas tariffs are not filed with the Interstate Commerce Commission?—A. They are to-day; they were not several years ago.

Q. When did you commence to file them?—A. Well, under the new order of things; I don't know just whether it was last year or 15 or 18 months ago, but within the last two years, at any rate.

Q. When did this new order of things commence?—A. The Hepburn bill took effect August 28, 1906, and shortly thereafter the Interstate Commerce Commission got out various rulings that we are observing.

10773 Q. They have had the same kind of rulings ever since 1888, haven't they?—A. I don't know as to that. I don't think so.

Q. You have seen the ruling that has been shown here in court frequently that they made in 1888, haven't you?—A. I don't know to what you refer.

Q. I refer to the order of the Commission requiring all local tariffs which are used on interstate shipments to be filed with the Interstate Commerce Commission.

Mr. MARTYN. When on through bills of lading.

Q. When on through bills of lading. Will you look at it, please [handing pamphlet to the witness]?

Mr. MILLER. Is that marked as an exhibit?

Mr. KELLOGG. No; but it has been read into the evidence.

Q. Now will you look at the one that was made in 1906, the last clause, and see in what respect they differ [handing witness Interstate Commerce Commission circular]?—A. They are practically to the same effect.

Q. Then you would say that had been the order of the Commission since 1888, wouldn't you?—A. I should say so.

Q. Then it was no more legal to do it since 1888 than it was after 1906, was it?

Mr. MILLER. I object to that as incompetent, and as involving a question of law.

Mr. KELLOGG. The witness has been testifying that certain tariffs were legal tariffs. I assume he can testify to it on cross-examination as well as on direct.

Mr. MILLER. He is testifying as to what at the time other roads regarded as the legal tariff.

10774 Mr. MARTYN. And what he would have regarded as the legal tariff.

Mr. MILLER. In connection with this question, too, this witness or any witness ought to be given, if he is to pass upon a question of law, the provisions of amended section 6 of the interstate commerce act as amended by the Hepburn Act in 1906, in which this requirement of filing State rates was expressly required for the first time.

Mr. KELLOGG. It always has been expressly required, Mr. Miller.

Mr. MILLER. If you will look at the two acts you will see the difference.

Mr. KELLOGG. There never has been any change in the law in that respect since the interstate commerce law was passed.

Q. Do you consider it just as illegal before as since 1906, having looked at both of these rules?—A. I think that there is no difference between the order as published in 1888 and the order published in 1906.

Q. All right. Now you have named various local rates that were not filed with the Interstate Commerce Commission, that you would quote. You assume, do you not, in quoting those, that it was legal to make interstate shipments on those local rates, don't you?—A. Yes, it was the custom.

Q. Yes; you assume that as a part of your answer?—A. Yes, sir.

Q. And you assume that those local rates were open to all shippers, and were posted, published rates, although not filed with the

10775 Commission?—A. Nothing secret about them; they were open for every one.

Q. Now, if they were not such rates, but were secret rates and were made for the benefit of one particular shipper, you would not make that same answer, would you, if they were secret rates and made for one shipper only?

Mr. MARTYN. I object to that. If things were not what they are, they would be otherwise.

Mr. KELLOGG. Well, he has given an opinion on one of these.

WITNESS. I wish you would read the question.

Mr. KELLOGG. I will be more specific.

(Paper marked "Petitioner's Exhibit 933.")

Mr. KELLOGG. May it be understood that petitioner's Exhibit 933 is the tariff from New London to Burlington on petroleum, that was testified to in this case?

Mr. MARTYN. Yes, it may be so understood.

Mr. KELLOGG. I offer petitioner's Exhibit 933 as a part of the cross-examination of Mr. Shubert.

Q. Now, Mr. Shubert, looking at petitioner's Exhibit 933, a tariff from New London, Connecticut, to Burlington, Vermont, of 12 cents per 100 pounds on petroleum, that is one of the tariffs on which you based your answer as to those Vermont rates, is it?—A. Yes, sir.

Q. This tariff, being filed with the Interstate Commerce Commission, and the local rates from Burlington to Bethel and Montpelier, shown in petitioner's Exhibit 680–I, not being filed with the Commission—you say that you would quote the rate of 12 cents from New London to Burlington and the rates named in petitioner's Exhibit 660–I, which were not filed with the Commission, from
10776 Burlington to destinations, Montpelier and Bethel, do you?—A. Yes, sir.

Q. That is, you assume that these local rates out of Burlington were open, published rates, and open to all shippers, do you?—A. I do.

Q. Will you please look at one of these rates, which contains the following schedule: "The following arrangement will apply on S. O. Co. shipments from Burlington, Vermont, and shipments will be waybilled by Burlington agent at the figures mentioned." Then follow a large number of stations. I show you petitioner's Exhibit 660–D, and another one of these billing orders or special orders, 660–C, "Handling S. O. Co. shipments from Burlington in tank cars. You will waybill on the following basis as from February 1, 1903." Then there are the names of Bethel and Montpelier, and the same rates that are in 660–I, which you have. I will show you 660–I. You will see that is the same rate; Bethel and Montpelier, $36 and $45 a car, isn't it?—A. $36 and $45; yes, sir.

Q. They are the same rates named in Exhibit I which you testified to, which show "Account of Standard Oil Company." Now, you don't mean that you would quote those to anybody except the Standard Oil Company, do you?—A. There is nothing in this special rate advice to show that it can be applied only on Standard Oil Company shipments.

Q. You take a tariff which says "Handling Standard Oil Company shipments from Burlington in tank cars. You will waybill on the following basis, to wit, $36 a car to Montpelier and $45 a car to Bethel," to authorize you to do that for anybody else,
10777 do you?—A. That is not the one I looked at.

Q. Well, that is the same rate and the same roads.—A. It does not matter, it was not the one I had.

Q. Answer as to that one first, and then I will turn to the other. You say that would authorize you to bill anybody's freight at that rate, do you?—A. No, sir.

Q. You could only bill the Standard Oil's at that rate?—A. That is all that that instructs.

Q. Now this tariff that you refer to is called a special rate advice, isn't it?—A. Yes.

Q. What is a special rate advice?—A. It is a special publication issued, containing rates at variance with the tariff rates.

Q. Why isn't it called a tariff, then?—A. Why, all lines have a habit of issuing these special notices. They are not confined to any one line, and it was not confined to any one person.

Q. What does this mean, "Special rate advice. The following special rate is authorized on petroleum oil in tank cars, account of Standard Oil Company." What does that mean?—A. It does not read that way. It says, "The following special rate is authorized on petroleum oil in tank cars."

Q. "Account of Standard Oil Company."—A. Yes, sir. I don't know whether it can be used only on their shipments, or somebody's else shipments.

Q. What does "Account of Standard Oil Company" mean?—A. I don't know.

Q. You don't know?—A. Maybe the Standard Oil Company were instrumental in getting that rate in. I don't know; but it does not say that it should be confined to their business only.

10778 Q. Well, does it say that anybody else can have it?—A. It does not confine it to them. Therefore anybody else could have it. There is a period in there.

Q. What does "Account of Standard Oil Company" mean?—A. I explained to you——

Q. That you don't know.—A. That is probably a reference why the rate was published.

Q. Oh, it is?—A. I don't know. I say probably it is.

Q. You are a tariff expert. Are you in the habit of publishing tariffs "Account of Standard Oil Company?"—A. We were in the habit of placing on various issues the reason why the publication was issued.

Q. Will you produce any which you issued "Account of Standard Oil Company?" Have you got any such tariffs?—A. I don't think so.

Q. Because there is a period after "cars" you think "account of Standard Oil Company" is a part of that same clause; that is, "The following special rate is authorized on petroleum in tank cars. Account of Standard Oil Company."—A. I think it changes the interpretation to be placed on it altogether: yes, sir.

Q. Well, with that period, what does it mean?—A. With the period?

Q. Yes?

Mr. MARTYN. I submit that he has already stated twice.

WITNESS. I think I stated. I tried to. If you want me to do it again I will be glad to.

10779 Q. You think it means it was put in at the request of the Standard Oil Company?—A. I believe so.

Q. Why didn't it say so, then?—A. Well, we don't always do just what we intend to do.

Q. But these other rate orders that you looked at, you say only authorized Standard Oil Company shipments?—A. Yes, sir. If I were the agent I would not handle it any other way.

Q. Then you would not quote those rates that were only authorized for the Standard Oil Company to any other shipper, would you?—A. If I had that special rate advice there I would name it on anyone's shipment.

Q. Whether it was under this tariff that was only to be used for the Standard Oil Company or not?—A. Well, that tariff does not say that it is for the Standard Oil Company only, the tariff that——

Q. But you said the tariff of February 1, 1903, only authorized Standard Oil shipments, didn't you?—A. Well, let us look at the tariff. There are two tariffs there, I assume.

Q. "Handling Standard Oil shipments" [handing witness paper]. That is one of them. The other is dated 1904.—A. One of them is 1903 and the other is 1904, is that the idea?

Q. Yes.—A. The one in 1903 I would not apply on any shipments except of the Standard Oil Company.

Q. Then, if any shipments were made during 1903, you would not quote the sum of those two rates except to the Standard Oil Company?—A. Not unless there was some other tariff.

Q. Well, there does not appear to be any.

Mr. MARTYN. Not yet, but the case it not over.

Mr. KELLOGG. No.

10780 Q. Now, this tariff, petitioner's Exhibit 933, you would not quote on shipments to any of those places unless the goods were routed via Windsor and Essex Junction, would you?—A. I would confine the rate to the route as quoted in the publication.

Q. That is Windsor and Essex Junction, isn't it?—A. Yes, sir.

Q. Now, the shipments in question in this case were not routed that way. Then, you would not quote those rates, would you?

Mr. MARTYN. I object to that as an incorrect statement of the record. The evidence is that they were stopped off at the intermediate station.

Q. They would not go to Essex Junction or Windsor at all, and did not go there?

Mr. DURAND. Only Essex Junction.

Q. Well, to Essex Junction, then.

Mr. MARTYN. Montpelier being south of Essex Junction.

Q. But that doesn't authorize any shipment except by Essex Junction and Windsor, does it?—A. It does not.

Q. So that if the shipments went by some other route and did not go to Essex Junction or Windsor, the tariff would not authorize it, would it?—A. It would not.

Q. Now, percentage sheets or division sheets of railroads are not usually filed with the Commission, are they?—A. They are not.

Q. What are they for?—A. For apportioning the revenue of a joint rate to the different carriers involved.

10781 Q. The shipper is not interested in that subject, is he?—A. I think not.

Q. Is that the reason they are usually, or sometimes, marked "Not to be posted," like the one you testified to [handing witness paper]?—A. I believe so.

Q. Defendants' Exhibits 114–A and 114–B were so marked, were they not?

Mr. KELLOGG. Where is 114–A?

(No response.)

Q. Well, Exhibit 114–B is so marked, isn't it?—A. Yes, sir.

Q. What would you understand by that "Not to be posted?"—A. I haven't real good knowledge on it, Mr. Kellogg. It is an eastern matter. We never put that on any of our publications.

Q. You never do?—A. I can give you my opinion on it, but I am not posted about it.

Q. Then I will pass that. Anyhow, that is a publication that the shipper is not interested in, you say?

Mr. MARTYN. He said was not interested in it so far as the division of rates was concerned, but not so far as the route was concerned when the tariff makes that a part of it to make the route.

Mr. KELLOGG. That is what you said; not what he said.

Mr. MARTYN. No; that is the substance, exactly, of what he said.

Q. Now, Mr. Shubert, this Pennsylvania tariff, 26½ cents a hundred from Olean to Norwood, New York, on its face does not name
10782 any route by which the shipment is to go, does it?—A. It does not. It refers to the percentage sheet for the routing.

Q. It refers to a document that is made solely for the use of the railroads between themselves and the railroad agents?—A. Well, I wouldn't say that.

Q. If it was not to be posted and not to be in the hands of the public, where they could find out, tell me how a shipper is to know by what route he can send his freight when the tariff makes no limitations.—A. By making inquiry of the railroad representative; that is what the man is there for.

Q. Then you think it is his duty to follow that up and find out the contents of some document that was intentionally kept from him, do you?—A. I do not think it was intentionally kept from him.

Q. "Not to be posted" was intentionally put on there, evidently?—A. Well, take the requirements of the Interstate Commerce Commission to-day; you are not required to put any routing on tariffs if you don't want to.

Q. Certainly not, but you are entitled to ship by any route when you don't put it on the tariff, aren't you?—A. Yes; any line that is a party to the tariff.

Q. Now, the Pennsylvania Railroad and the New York Central are both parties to this tariff, are they not?—A. Yes; but we have specific routing instructions in that instance.

Q. Not in the tariff, is there?—A. In the percentage sheet.

Q. In the percentage sheet, but that is not for the use of the shipper?—A. I didn't say it was.

10783 Q. If the shipper was to see that tariff he would have a right to assume that those goods could go by any route, wouldn't he—on the face of it?—A. No; I don't think so.

Q. He has got to follow it up and find out at his peril about some other document that is not filed, has he?—A. He has; yes, sir.

Q. That is the way you would interpret the shipper's rights, is it?—A. Yes, sir.

Q. He hasn't got much in the way of rights under that, has he?—A. He has got all the rights on earth; nothing abridged in that case at all, that I can see.

Q. The railroad company could change the routing instructions any day they saw fit, couldn't they?—A. They could.

Q. They could write a letter to the local agent and tell him to route via Rochester, couldn't they?—A. No; not with that statement published on their tariff.

Q. Why couldn't they?—A. Because it says refer to the percentage for the routing. A letter is not a percentage.

Q. They could change them by letter any day, couldn't they—a letter signed by the New York Central?—A. They should not. I don't know whether they could or not.

Q. They could do it any day, couldn't they?—A. I don't know whether they could or not.

Q. They don't have to give any length of notice, do they?—A. No.

Q. Now the law requires a certain length of notice to change a tariff—30 days, doesn't it?—A. To-day; yes, sir.

10784 Q. 30 days?—A. Yes, sir.

Q. And formerly it required 10 days to raise a rate and three days to lower it?—A. That is correct.

Q. But you can change that percentage sheet in three minutes, can't you, without any notice to the Commission?—A. Yes.

Q. So if that percentage sheet was changed to route via Rochester, that tariff would not have to be changed at all, would it?—A. Not if the percentage sheet were changed.

Q. And it would be a tariff by Rochester, wouldn't it?—A. Whatever the percentage sheet authorized.

Q. Now suppose the railroad company was to ship by Rochester, the shipper didn't know anything about that percentage sheet, the rate would apply, wouldn't it?—A. It would apply in line with the routing instructions provided in the percentages.

Q. Tell me how as agent at Olean, you would quote a through rate to Burlington on these two tariffs—or three tariffs—one of the Pennsylvania, one of the New York Central, and the other $23 a car. As agent at Olean, how would you quote any such rate?—A. If I had the tariffs I certainly should quote the rate. I would simply combine them, and if that made a lower rate than the published rate I would so quote.

Q. Now, how would you have the tariff from Rochester to Norwood?

Mr. MARTYN. Whether it was filed with the Commission or was not?

Q. Please answer the question.—A. Agents at important shipping points are very frequently given tariffs, so as to enable them
10785 to quote rates on traffic to or from their stations when the tariff itself does not quote a rate to or from their stations.

Q. I know, but here is a rate marked "Not to be posted," issued by the New York Central road.—A. That would not prevent them from placing it in the hands of the agent at Olean if they wanted to do so.

Q. You think the New York Central Company would place it in the hands of the agents of other railroad companies although it was not to be posted in their own depots, do you?—A. They may do so.

Q. Well, do you think they would do so?—A. We have local tariffs of other lines in the hands of our agents.

Q. That are marked "Not to be posted?"—A. The Western lines do not mark their tariffs "Not to be posted." I so testified a while ago. We never place anything like that on our tariffs.

Q. Then, to quote that rate you would assume that this "Not to be posted" tariff would be sent out to the agent of another company, do you?—A. It may, in some instances.

Q. If it was not you would not be able to quote it, would you?—A. Not if I didn't have the tariff that made the rate, from the general freight agent or some other authorized representative.

Q. Since 1906 you would not quote those rates, would you, without their being filed with the Commission?—A. No, I would not, although the Commission take the ground that the sum of the locals
10786 will apply unless the carrier can show cause for carrying a higher rate. It is up to the carrier to show reason for carrying the higher rate. They say it is prima facie evidence that a combination of locals will apply.

Q. They also take the position that all State tariffs on interstate business must be filed, don't they?—A. All tariffs, whether they are interstate or intrastate, are now filed, so far as we are concerned.

Q. Now, you say it was customary for the Rock Island road to apply Chicago rates to the Chicago switching district, do you?—A. Yes, sir.

Q. In 1904 and 1905 you had no line from Whiting to the city of St. Louis, had you?—A. We joined with the C., P. & St. L. in rates between Chicago and St. Louis and East St. Louis via Peoria.

Q. During 1902, 1903, and 1904 what was the rate on petroleum oil from Whiting to East St. Louis?—A. I don't know.

Q. You can easily determine, can't you?—A. Not very easily; no, sir.

Q. You were a party to the Tariff No. 24?—A. I know what that rate is. That rate is 18 cents. But there may have been some other special tariff in, authorizing a different rate.

Q. You would not know whether the Rock Island had a special tariff from Whiting to East St. Louis in connection with some other road?—A. No; I would not, without looking it up.

Q. Look it up, will you?—A. My office is simply buried with work. We are working night and day in all sorts of extra work, and I don't want to take any additional work unless I am abso-
10787 lutely forced to do it.

Q. How long have you been here in court?—A. Part of yesterday and part of to-day.

Q. And you were here the day before yesterday, weren't you?—A. No, sir.

Q. Well, I guess it wouldn't take you but a little while to find out if you had a tariff from Whiting to East St. Louis, would it?—A. I don't know just how long it would take. Our records are not the best on earth. We probably could unearth it by a search.

Q. I wish you would please look up and find out if you have a tariff, or did have from 1900 down to 1906, on petroleum, other than the 18-cent tariff which is here in evidence.—A. As I stated, I do not want to take any additional work unless I am forced to.

Q. I can't help whether you want to do it or not.—A. If it is the order of the court, I will do so; otherwise I will not.

Q. Do you insist on a subpœna being served on you?—A. I shall not take any additional work in my office for the reason we are working nights and Sundays, and I do not propose to take any other work unless I am forced to do so.

Q. How much time have you spent talking with counsel and Mr. Felton about this case?—A. I spent about one-half hour with them, sir; not in excess of that.

Q. Now, will you take half an hour and look this up?—A. I could not personally find it myself, because I don not personally handle the records.

10788 Q. Do you decline to do it?—A. Unless I am forced to do so.

Q. Unless you are forced to do so?—A. Yes, sir; and then I shall be very glad to furnish it. Not that it is a secret at all, but simply as a matter of work in my office.

Q. Isn't it a fact that the 5th-class rate applied on oil from Whiting, and the rate was 18 cents?—A. I don't know.

Q. Did you look——A. I never looked it up in my life. I never was asked about it before you asked me this afternoon.

Q. Never had the inquiry made of you?—A. No, sir; absolutely not.

Q. Now, you knew there was a 6-cent rate, did you?—A. I learned there was a 6-cent rate via another line, because I have seen the tariff. I was a witness here a year or so ago when the case was up.

Q. But I mean prior to that time you never knew there was such a rate, did you, prior to the time you looked it up to be a witness?—A. I don't believe I did; no, sir.

Q. That is, during the years 1900, 1901, 1902, 1903, 1904, and 1905, down to the time you looked it up to become a witness in this case, you never knew there was such a rate as a 6-cent rate, did you?—A. I don't know. I may have known, but if I did I have forgotten.

Q. Did you haul any oil from Whiting to East St. Louis?—A. I don't know. I don't see the billing and have no interest in it whatever.

Q. Now, on your line of road the 5th-class rate in many places is used on oil, isn't it?—A. Yes, sir.

Q. All over the West?—A. Oh, there are commodity rates
10789 on oil.

Q. Yes, but there are also places where the 5th-class rate is used?—A. Yes.

Q. From Chicago also?—A. Yes, sir.

Q. And you shipped oil from Chicago on the 5th-class rate, didn't you?—A. Without doubt. I don't know to my personal knowledge that we did, but I would think so.

Q. Take tariff No. 24 and the Illinois classification going with it, and did that make a rate of 18 cents a hundred on oil over your road and connections to East St. Louis? You are familiar with it, are you not?—A. Yes; the rate is 18 cents.

Mr. MILLER. I object to that on the ground that the tariff purports only to make a rate from Chicago and Milwaukee and Watertown, Wisconsin.

Q. Your line had application sheets making that rate applicable to Whiting, hadn't it?—A. Yes; I believe so. I haven't the application sheet here, but I believe so.

Q. Do you remember that the Interstate Commerce Commission, long prior to 1904, required your road to list on its application sheets tariffs applicable to Whiting?—A. I remember such a request; yes, sir.

Q. And you complied with it, did you?—A. I think so; we aimed to, at any rate.

Q. Now, the Chicago & Alton application sheet, I. C. C. 1203, also made tariff 24 applicable to Whiting, did it not, and listed it as the first tariff in its list of tariffs?—A. Yes, sir.

Q. It did not anywhere name the 6-cent rate specifically on
10790 the face of the application sheet, did it?—A. Yes, sir.

Q. Where?—A. Right there. [Pointing on paper.]

Q. By number?—A. By stating that the rates from Chicago will apply from Whiting with a certain minimum fixed.

Q. Is that a specific reference to the tariff by number?—A. No, sir.

Q. There is no reference to the tariff whatever there, is there, by number or description?—A. No, sir; but there is the application there, very plain—very plain, indeed.

Q. Then you assume, in further answering the question, that a rate not filed with the commission, and perhaps not known to any shipper except the Standard Oil Company, was the only rate that could apply under this application sheet from Whiting, do you?—A. Whatever the rate was from Chicago to East St. Louis under that application sheet became the rate from Whiting to East St. Louis, but not less than that 35-cent minimum scale.

Q. What did the Chicago & Alton mean by putting that list of tariffs on their application sheet?—A. I haven't the slightest idea.

Q. Are you familiar with the correspondence calling on them to list their tariffs applicable to Whiting?—A. No, sir.

Q. Let me show it to you.

Mr. MARTYN. Would you interpret the tariff in the light of correspondence he had never seen or heard of?

Mr. KELLOGG. He will have a chance to see it and hear of it, if you will just be patient, Mr. Martyn.

Q. Before that application sheet was issued—what is the
10791 date of it?—A. June 4, 1903.

Q. That superseded 981, didn't it?—A. 981 is the preceding application sheet; 981, I think, superseded two of them.

Q. Well, 981 is one?—A. Yes.

Q. Now, it appears in this case that the auditor of the Interstate Commerce Commission wrote to Mr. Wann before that application sheet was issued——

Mr. MARTYN. Under what date, please?

Q. Under date of August 15, 1901. "Your I. C. C. No. 981" (which preceded that) "taking effect August 13, 1901, does not plainly show the rates to be charged as the law requires. I have to request, therefore, that the schedule be reissued as a supplement to the tariffs showing the rates, or that reference be at least made to the I. C. C. numbers of such tariffs, so that the Commission may have ready access to same." What do you understand that to mean?—A. I understand that he didn't do what the man asked him to do.

Q. Didn't he list after that a list of stations on the tariff schedule?—A. I don't know whether he did or not. He doesn't say so.

Q. Isn't there a list of tariffs there?—A. Yes; but there is no connection——

Q. Is there not a list of tariffs there?—A. There is, but there is no connection between that list and the application of the publication.

Q. Why not?—A. Where is it?

Q. Doesn't he list tariff 24?—A. He does.

10792 Q. And doesn't it make it applicable to Whiting?—A. It does.

Q. Then, why isn't there some connection between tariff 24 and the application sheet?—A. There is.

Q. Then, it did list one tariff or make it applicable to Whiting?—A. Yes, but it didn't list all of them.

Q. How do you know it didn't?—A. Because it did not.

Q. You didn't see it, did you?—A. No; but it says that the rate from Chicago to this territory is subject to this minimum schedule and will apply from Whiting.

Q. In connection with the following tariffs?—A. It doesn't say anything of the kind.

Q. Then you understand that letter to mean that the Alton road were required to list their tariffs, but did not do so?—A. That is correct; yes, sir.

Q. Did you comply with the request yourself?—A. We aimed to.

Q. Did you do it, or did you fool the Interstate Commerce Commission?—A. We hope we did not fool them.

Q. Then, you did list all of yours, did you?—A. I hope so. I don't know.

Q. You understood you were required to, didn't you?—A. When we got the letter; yes, sir.

Q. Suppose there is a 10-cent tariff from Chicago to East St. Louis, and then later there is a 9-cent tariff filed from Chicago to East St. Louis, the last tariff not referring to the first at all, which rate is in force?—A. The 9-cent rate.

10793 Q. Why?—A. It has been the custom to apply the lowest rate, and as specific reference was made to cancel that rate, there were two or three——

Q. Perhaps the first rate was not canceled at all?—A. Well, quote the lowest rate. We have had and other lines have had——

Q. Do you call the other canceled?

Mr. MARTYN. I submit the witness has a right to answer the question.

Mr. KELLOGG. Certainly.

WITNESS. We have had and other lines have had two or more tariffs quoting different rates on the same commodity between the same points.

Q. Commodity tariffs?—A. Some of them class rates.

Q. There is a difference between a class rate and a commodity tariff?—A. We have had class tariffs between the same points at variance with each other. One did not cancel the other.

Q. Do you have two commodity tariffs on the same article, between the same points and over the same line of road—different rates?—A. We have had, yes, sir.

Q. You have had?—A. Yes, sir. We have got them to-day, I believe. We are trying to get away from them just as fast as we can.

Q. You don't think you have any right to have them, I suppose?—A. No, I do not believe we should have those kinds of tariffs, and we are trying our best to get away from them.

Q. You don't think the last tariff would supersede the first?—A. We have been giving the shipper the benefit of the lowest

10794 rate, without any favor whatever.

Redirect examination by Mr. MARTYN:

Q. When you had two class tariffs at variance, which would you quote?—A. The lower one.

Q. If a shipper would apply, for example, to the Central Vermont Railway for a rate between two points in the State of Vermont, and they gave you a rate in the form of a tariff or a rate order, a rate at any rate put down on paper, and put your name on that sheet of paper in addition, would you consider that your name being on the sheet of paper precluded you from using the rate?—A. Not unless the statement was made that it was for the account of such a party only.

Q. You would not think the statement that the rate was for your account would preclude you from using it, would you?—A. No, I would not.

Q. What is the fact with regard to whether or not the railroads, so far as you have had experience, did observe the rule or suggestion, or whatever it may have been, of the Interstate Commerce Commission of the year 1888 with regard to filing State tariffs?—A. I do not believe any of them observed it. There was considerable opposition then to posting with the Interstate Commerce Commission the intrastate tariffs, that is, tariffs which did not carry any interstate rates.

Mr. KELLOGG. There was considerable opposition to obeying the law at all, wasn't there?

WITNESS. No, I don't think so.

10795 Mr. KELLOGG. The roads paid rebates for years, didn't they?

WITNESS. Well, you have as good knowledge on that subject as I have, I assume.

Mr. KELLOGG. Well, you assume it is true, don't you?

WITNESS. Oh, I have heard that rebates were paid in times past.

Mr. KELLOGG. That did not make it legal, did it?

WITNESS. No, sir.

(An adjournment was here taken until the morning of Thursday, October 22, 1908, at 10.30 o'clock.)

10796 ROOM 803, FEDERAL BUILDING,
Chicago, Ill., Thursday, October 22, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison.

On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

FRED ZIMMERMAN, recalled for further redirect examination, as follows:

Mr. KELLOGG. I will say this for Mr. Zimmerman. He was asked to produce any State tariffs marked "Not to be posted." Mr. Zimmerman has produced some division sheets of tariffs which of course are posted, and so far as I am concerned he can be excused and not be asked to search further. I have no objection to that, or you can question him if you wish to.

By Mr. MILLER:

Q. Did you get any information, Mr. Zimmerman, with respect to the use of those words on the tariffs of any road, in making this investigation for Mr. Kellogg?—A. Yes, sir. Our Detroit office, of whom I——

Mr. KELLOGG. One moment. That is objected to as hearsay.

Q. You may state it. In pursuance of Mr. Kellogg's request, what did you do about it?—A. I inquired of our Detroit office, and they state that the Pere Marquette used that notation "Not to be posted" on their State tariffs issued prior to 1900, but they were un-
10797 able to produce copies of them; and I would further state, if I may, in explanation of my former statement, that that notation was used more or less; but owing to the fact that I have not access to the State tariffs of the roads that did use it, I am unable to produce the issues, and I produce these four, which name rates as well as divisions, and clearly on them are shown the words "Not to be posted, not for public distribution; for agents' and office use only."

Q. Just state into the record what those are, giving some identification of them, so that they can be produced if required.—A. Chesapeake & Ohio Railway Joint Freight Tariff No. F-759, dated effective January 18, 1892; Chesapeake & Ohio Railway Joint Freight Tariff No. F-482, dated effective July 6, 1901; Pennsylvania Railroad Company Empire Line West-bound Billing Book No. 2, dated in effect April 1, 1895.

Q. That names rates, does it?—A. That names rates and billing instructions; Pennsylvania Railroad Company Empire Line West-bound Billing Book, Groups A and B No. 2, in effect April 13, 1896.

Recross-examination by Mr. KELLOGG:

Q. Now, Mr. Zimmerman, you take these Chesapeake & Ohio, they name percentages between the roads, don't they, both of them?—A. As well as rates; yes, sir.

Q. Now, many percentage sheets also name the rates, do they not?—A. Some roads; yes, sir.

Q. Those are divisions of interstate rates, aren't they—show right on their face that they are?—A. And rates, too.

10798 Q. Yes, but divisions of interstate rates, too?—A. The division is just a very small proportion of it.

Q. Yes, but it does state the divisions?—A. Yes.

Q. Now you have not the slightest doubt, Mr. Zimmerman, but what the rates named in this division sheet are also published in a tariff, have you?—A. I should hope they were; yes, sir.

Q. Yes, of course.—A. In fact, I believe it says so on the face of it.

Q. In fact, it does say so, doesn't it, right on the face of it?—A. Yes.

Q. And the same is the case with the other Chesapeake & Ohio tariffs?—A. Yes, sir.

Q. And these other books that you present are also division percentages between the roads?—A. And rates; yes, sir.

Q. But the rates therein are published in regular tariffs—the interstate rates?—A. I don't know. It does not so state. I assume they are.

Q. Why, of course.—A. Yes.

Q. And it is not customary to post or publish or file division sheets, is it, or percentage sheets?—A. No, sir.

Mr. KELLOGG. That is all.
WITNESS. May I take these with me?
Mr. KELLOGG. Yes; you may take those with you.
WITNESS. I am excused, am I?
Mr. KELLOGG. Yes, sir.

10799 E. B. BOYD, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Will you please state your full name?—A. Edward B. Boyd.
Q. Do you reside in Chicago?—A. In Chicago.
Q. In what business are you engaged?—A. I am assistant to the vice-president of the Gould lines of railway.
Q. Located at Chicago?—A. Yes.
Q. How long have you held that position?—A. Since January first last.
Q. And prior to that time in what business were you engaged?—A. For three years with the board of trade, at the head of the transportation department.
Q. At Chicago?—A. At Chicago.
Q. What did your duties consist of in that position?—A. In the board of trade?
Q. Yes.—A. Looking after all matters pertaining to rates on grain and other articles handled on the board, for the purpose of seeing that the market at Chicago, so far as the transportation charges were concerned, were in line, in harmony with those prevailing by other gateways, and so on.
Q. What business were you engaged in prior to that time?—A. In railroad work.
Q. With what road?—A. The Rock Island.
10800 Q. Located at Chicago?—A. At Chicago and at Topeka, Kansas.
Q. What position did you hold with the Rock Island road?—A. From stenographer up to general freight agent.
Q. When you ceased your connection with the Rock Island road you were general freight agent?—A. Yes, sir.
Q. How long had you been connected with the Rock Island road?—A. About twenty-one years.
Q. In the freight department all the time?—A. All the time.
Q. So that your entire connection with the railroads in freight matters is how long a period of time?—A. Nearly twenty-two years, and with the board of trade three years more of railroad work.
Q. You have been generally familiar with freight matters during that time?—A. I have.
Q. With the use of tariffs?—A. Yes, sir.
Q. The construction of tariffs?—A. Yes, sir.
Q. The quoting of rates from tariffs?—A. Yes, sir.
Q. Do you know what railroads or traffic associations have had jurisdiction in past years over rates from C. F. A. territory to upper

Mississippi River crossings?—A. The rates from C. F. A. territory to upper Mississippi River crossings are the result of an agreement between the C. F. A. lines and the Illinois lines, through their representatives direct, or rather not through their representative—there was no association at the time the rates were established within the borders of Illinois; but the lines individually, representing their interests individually, conferred with the C. F. A. lines and es-
10801 tablished prorating arrangements by which rates were printed and maintained from C. F. A. districts into Illinois and to the upper river crossings.

Q. When were those prorating arrangements first brought about, as you remember?—A. I think in 1887. Some had been in effect, I believe, prior to that in central and lower Illinois by reason of the fact that certain eastern railroads had their own rails from the East into that section—fixed the rates—and the lines that ran from Chicago down to that district, in connection with other roads east of Chicago, met those rates; but the extension on up to the northern district was about 1887, as I recall it.

Q. About the time, or following the time of the adoption of the original interstate commerce law?—A. After—right after.

Q. What roads had their rails into this territory?—A. The Pennsylvania system operating over the Vandalia—you are speaking of Eastern roads, are you, now?

Q. Yes.—A. The Pennsylvania system operating over the Vandalia, and the T., P. & W., the Wabash Railroad, and the Big Four Railroad were the principal ones. The Lake Erie & Western was another.

Q. Do they run to the Mississippi River?—A. They ran, some of them, to the Mississippi River and some of them to Peoria, covering the central portion of the State.

Q. What roads leading out of Chicago reached those crossings?—A. The crossings that were reached by the Eastern lines, you mean?

Q. Yes; and what are commonly known as the upper Mississippi River crossing also.—A. At Burlington the C., B. & Q., and in connection with the Rock Island the B., C. R. & N.—Burling-
10802 ton, Cedar Rapids & Northern, now a part of the Rock Island; the Iowa Central, in connection with roads east of Peoria and in connection with the roads from Chicago to Peoria, like the Rock Island and the Alton; the Wabash from Chicago to the Mississippi River and to the upper river crossings; the Northwestern, the Milwaukee, the Great Western, and the Illinois Central.

Q. Was there any line that ran over its own rails from C. F. A. territory and vicinity, east of Toledo, to any of these upper Mississippi River crossings?—A. The Wabash road runs from Toledo to Burlington and Keokuk, one of the upper river crossings.

Q. You were connected with the Rock Island road in the years 1887, '8 and '9?—A. Yes.

Q. Did you have to do with the agreements or arrangements that you spoke of, with regard to prorating on rates from C. F. A. terri-

tory to those crossings?—A. Yes, I had more or less connection with them.

Q. Now, it is charged in this case that prior to the construction of the Whiting refinery it was the custom of railroads extending from western Pennsylvania and Ohio to join the western roads in making through rates to northwestern Illinois and Mississippi River points as far north as Dubuque, that were lower than the sum of the locals from eastern points to Chicago and Peoria, and from Chicago and Peoria into such territory; and that after the completion of the Whiting refinery the Standard Oil Company induced the railroads west of Chicago and Peoria to refuse any through rates from eastern lines on petroleum shipments from Ohio and Pennsylvania.

10803 It appears on this record that the Whiting refinery was completed about the first of January, 1891, and began making deliveries in the month of December, 1890. It also appears that there were no through rates or prorating arrangements subsequent to October 21, 1889, about two years prior to the completion of the Whiting refinery. Now will you please state in your own way what you remember and know of the negotiations between railroads, what rates were put in making through rates, upon what commodities, and what was the general railroad policy at that time as you remember and understand it.—A. Prior to the interstate law in 1887 certain railroads, like the Burlington, as I recall, carried in connection with the railroads east of Chicago, joint rates into the interior of Illinois as against direct competition of the eastern roads, the Pennsylvania system, the Big Four, etc. The C., B. & Q. at that time found this competition as far north as Burlington and Keokuk, and by the T., P. & W. and the Wabash. South of that line they carried the rates. Now I am speaking from memory, and as I recall it, it was on and south of their main line to Burlington. From time to time rates were put into Burlington, and it caused more or less confusion, from the fact that Burlington and also Keokuk (the same thing) being in the State of Iowa, was accessible to the Iowa distance tariff scale of rates, and that the through charge from the East into Burlington and Keokuk, and the rates from Burlington and Keokuk under the Iowa scale out, operated adversely to the interests of the jobbers at points on the Mississippi River farther north, who had to pay the rate in and out of Chicago to their jobbing centers, and

10804 then again, the Iowa Distance Tariff out from there, the three rates combined being in excess of the rate from the East direct to Burlington and from Burlington out, and the same way from Keokuk. Various devices were resorted to to equalize, first by carrying the scale of arbitraries from the Peoria base line; for instance, on the Rock Island, the station was Bureau, which arbitraries represented the difference between the rate from the East to Peoria and the rate from the East to Burlington, thereby practically making to Upper River crossings, Rock Island, Davenport, Moline, and Muscatine, the aggregate rate, or rates in the aggregate, equal to the rate to Burlington and Keokuk; and with their accessibility to

the Iowa Distance Tariff out, this practically gave them an equal show. This naturally created opposition upon the part of the lines farther north, like the Milwaukee, the Northwestern, and the Illinois Central, and later on the Great Western and the C., B. & Q. came into the field; because Dubuque and Clinton and Savannah, more or less in the jobbing interests, had the same trouble with respect to Rock Island as Rock Island had with respect to Burlington; and those lines carried the scale farther north, up to Dubuque. The result of it was that after several conferences the percentage arrangement that is in existence to-day was established from C. F. A. districts, and from New York and from Pennsylvania and the entire eastern scale, to all upper river crossings, Dubuque and south; and the Iowa Distance Tariff applicable west thereof gave these different cities about an equal scale of rates, one with the other. Prior to that time
10805 the rates from the East were made on a combination through Chicago, and wherever necessary special rates were made from Chicago into the State, to the Mississippi River, to enable the jobbers there, in connection with the rate into Chicago, to get their goods at an aggregate charge that enabled them to distribute in competition with the Mississippi River points lower down. Now the railroads established these rates as a scale, generally speaking. They did not make any exceptions. They put in everything. Whatever rate was applicable to Burlington and Keokuk was carried to the upper river crossings, whether on commodities or whether governed by classification.

Mr. MILLER. About what time are you speaking of now?

A. That was about 1887 or 1888. It was all started in what was called the famous Oconomowoc meeting. They were some six weeks or more in session at Oconomowoc, trying out all the different problems that resulted from the operation of the interstate law, which at that time was rather new, and of course chaotic conditions resulted. After that meeting these arrangements were put in, in response to an understanding arrived at at that time. Now, we discovered, after we got settled in our arrangements, that there were some commodities that need not have been included within that list; articles that were not handled by jobbers, and articles that were in the nature of raw materials. I don't recall just what those latter were, but wherever we found that we could do away with a prorate, which meant that we must take on our traffic from Chicago to all of this territory coming from the East materially less than we got on the local shipments, and which was favoring the manufac-
10806 turer and the jobber east, against the jobber and manufacturer in Chicago, we did away with it and cut it out, establishing the sum of the locals wherever we could, there being no competition in that territory north of the main line of the Rock Island road, which at that time was the dividing line, as against anything in the way of an eastern road, as no rails extended in that district except the western roads exclusively.

Q. Were there any oil jobbers at these Mississippi River crossings asking for through rates?—A. None that I recall.

Q. The roads, then, got more revenue from using the sum of the locals on oil traffic——A. Yes, sir.

Q. ——than they would have gotten had they prorated?—A. Yes, sir.

Q. This nonprorate on petroleum products appears to have taken place about two years prior to the completion of the Whiting refinery.

Mr. KELLOGG. I think your figures are not correct—in October, 1889, to December, 1890.

Q. About one year prior?—A. A little more than one year prior.

Q. Did the Whiting refinery have anything to do with the refusal of the roads out of Chicago to make through rates after that time on petroleum oil?—A. The rates before that time having been made, the Whiting refinery could not possibly have had anything to do with it.

Q. Mr. Boyd, going back now to the time prior to the enactment of the present interstate commerce law, which went
10807 into effect on August 28, 1906, and say, for instance, prior to January first of that year, what was the custom of railroads with regard to the use of the sum of the locals where that was less than the through rate, or where there was no through rate?

Mr. KELLOGG. You are going over the same testimony?

Mr. MARTYN. Just in a general way.

Mr. KELLOGG. It is objected to as incompetent and immaterial, and each question may be taken subject to objection the same as though I repeated the objection?

Mr. MARTYN. Certainly.

WITNESS. What date did you say—prior to what?

Q. I say prior to October 1, 1905.—A. I can only answer prior to October, 1904, as I left the service at that time, and until January 1 I did not re-enter the railroad service. Now, there was so much interruption I lost the question there.

(The reporter read the question as follows: "Mr. Boyd, going back now to the time prior to the enactment of the present interstate commerce law, which went into effect on August 28, 1906, and say, for instance, prior to January first of that year, what was the custom of railroads with regard to the use of the sum of the locals where that was less than the through rate or where there was no through rate?")

Mr. MILLER. Apply that now to the date prior to the time of your leaving the railroad service.—A. Where there was no through rate, the only charge to be exacted was the sum of the locals. Where the sum of the locals was less than the through rate, it was
10808 customary to protect that sum of the locals as being the actual rate.

Q. What was the custom of the roads with regard to filing with the Interstate Commerce Commission tariffs that named rates merely between points in the same State, commonly known as State tariffs?—A.

Well, I could not answer as to other roads, but as I recall it, there were some of the carriers, I believe, filed different tariffs, and some did not. There did not seem to be any recognized practice until—I don't know that there was any recognized practice anywhere until after the Hepburn Act was established, or the injunction, somewhere about that time. I left the tariff department earlier, away back in 1892, and I do not recall what might have taken place in the way of filing tariffs subsequent to that time.

Q. If in ascertaining the lowest combination of locals, the use of such a State tariff, that was not filed with the Interstate Commerce Commission, was available to furnish the lowest combination, was that used?—A. As far as my knowledge goes, it was used. I know I used it whenever I got a chance, whenever I found it.

Q. Regardless of the fact that the shipment came from another State or was going into another State?—A. It made no difference where the shipment came from, as long as it came to the point where that rate commenced.

Q. Or regardless of the fact that there may have been a through rate that was filed with the Commission which was higher?—A. It did not make any difference. The lowest combination always governed.

Q. Was that done with all shippers?—A. Well, it is my ex-
10809 perience that it was. I know of no exception.

Q. And all classes of freight?—A. All kinds of freight.

Cross-examination by Mr. KELLOGG:

Q. Mr. Boyd, the Whiting refinery, I suppose, which started to ship about December, 1890, was under construction, I suppose, for a year or so, wasn't it?—A. I do not know, Mr. Kellogg——

Q. You do not know?—A. ——when they commenced the construction of it.

Q. You don't know anything about whether there were any conferences between the Whiting refinery officials—that is, the Standard Oil officials—and the railroads, about this prorating arrangement or not?—A. I could not say what might have taken place when I was not there.

Q. You do know that oil was taken out about October, 1889?—A. Somewhere along there; I don't recall the exact date.

Q. Were you present at all the conferences at which this subject was discussed?—A. Why I was present at a number of general meetings where questions of different character would come up.

Q. Prorating on oil was resumed about 1907, was it not?—A. That I don't know. I was not in the railroad service.

Q. You were not in the railroad business at that time. Can you name any other commodities that were cut out about 1889?—A. Yes; salt.

Q. Salt?—A. I think about that time, but I can't give you the exact date.

10810 Q. That was restored again afterward, wasn't it?—A. Well, I don't remember whether it was or not.

Q. And for many years there has been prorating on salt?—A. Well, I don't know whether there has or not in upper Illinois. I am not sure. I think not.

10811 F. A. LELAND, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Your full name?—A. F. A. Leland.

Q. Where do you live?—A. In St. Louis.

Q. What is your business at the present time?—A. I am at present chairman of the Southwestern Tariff Committee.

Q. Just what is the Southwestern Tariff Committee?—A. The Southwestern Tariff Committee is an association of the southwestern railroads, for the purpose of conferring with one another and the shippers about the adjustment of and publication of rates to and from the southwestern territory.

Q. And your office has charge of the tariffs published by that committee?—A. We publish, for account of these southwestern railroads, various tariffs which are designated as common tariffs, in the fact that they are used in common by a large number of railroads, instead of each railroad publishing its own tariff.

Q. At the present time are you getting out quite a good many tariffs?—A. Yes, sir; we have made more progress in our territory toward the common tariff publication idea than has been made in other districts in the United States, the common tariff being regarded as the most satisfactory form of tariff.

Q. How extensive have been the tariffs published by you in the last few months?—A. A very large portion of the traffic
10812 of the southwestern railroads has moved at the rates named in our tariffs. During the months of August, April, and May of this year we filed with the Commission an average of 92 pages of printed tariffs every working day. That number, I might remark, would be very much increased if the tariffs had been issued by the individual lines.

Q. The movement in that direction has been more marked and active since the present interstate commerce law went into effect, has it?—A. It has been more marked and active since the present law, and the rules the Commission have prescribed for publishing tariffs. The Commission have rather encouraged the idea of consolidated, simple tariffs, rather than a large number of individual tariffs.

Q. Do you know about how many tariffs were filed with the Interstate Commerce Commission last year?—A. I don't know accurately, but I read in some article that purported to be authoritative, that there were about 220,000 tariffs filed last year with the Commission.

Q. That is, freight tariffs?—A. Yes, sir.

Q. And how large were those tariffs, do you know?—A. Those tariffs, of course, are of various sizes. Many tariffs have one or two sheets, and many tariffs have as high as four and five hundred sheets. The average of our tariffs is about 100 pages.

Q. How long have you been with this committee?—A. Since January 1st, this year.

10813 Q. Prior to that time what was your business?—A. I was with the M. K. & T. Railroad.

Q. Located at St. Louis?—A. Located at St. Louis, then at Kansas City, and later at St. Louis; in the capacity of assistant general freight agent at Kansas City and St. Louis, and prior to Kansas City as chief clerk to the vice-president and traffic manager.

Q. How long an experience had you had with that road?—A. Fourteen years.

Q. Continuously prior to January 1st of this year?—A. Yes, sir.

Q. It is charged in this case that prior to August, 1904, there was an oil rate from the Kansas fields to Kansas City of 10 cents per 100 pounds, and from the same territory to St. Louis of 15 cents per 100 pounds; that the Standard Oil Company constructed a refinery at Sugar Creek, which is adjacent to Kansas City, and that coincident with the completion of that refinery the railroads conspired with the Standard officials to increase the rates to Kansas City to 17 cents and to St. Louis to 22 cents a hundred pounds, and thereby made it impossible for independents to ship fuel oil in competition with the Standard Oil Company.—A. To ship fuel oil?

Q. Yes, that is the charge. Do you know anything about that increase in rates?—A. Yes, I have some knowledge of those circumstances.

Q. What roads were interested other than your road?—A. The M., K. & T., the Frisco, the Missouri Pacific, and the Santa Fe, primarily.

Q. Won't you explain in your own way what you know
10814 about that increase in rates, what brought it about and by whom it was brought about, and the conditions which you understand as having brought it about?—A. Prior to the development of oil in Kansas, which became quite pronounced in 1902——

Mr. KELLOGG. He has already testified in this case on that subject.

Mr. MARTYN. He testified under a different kind of an examination, an Interstate Commerce examination.

Mr. KELLOGG. Yes, but the testimony is in the record.

Mr. MILLER. Part of it.

Q. Go ahead.—A. There had been some little production in the neighborhood of Neodesha, and there had been a small refinery operated at that point, which disposed of a limited amount of product in the shape of naphtha in St. Louis and in two or three places in Kansas. There was also some movement of crude oil from this same shipping point, Neodesha, to St. Louis, and the rate had been published for a number of years as applying on oil, crude petroleum, naphtha, carloads, minimum weight 30,000 pounds in barrels, and the capacity

of the tank in tank cars, 15 cents to St. Louis. There was a similar rate on crude petroleum from that point and a few other points to Kansas City. When the development of oil became pronounced in the Kansas district, the refinery at Neodesha increased its capacity with a view or refining a larger amount of crude and making other products than naphtha, and they asked the railroads leading to St. Louis if this rate of 15 cents on the crude oil and the naphtha oil could be extended to apply on all products of petroleum,
10815 and for a reduction in the minimum weight from 30,000 pounds to 24,000 when in barrels.

Q. About what time was this, as you remember?—A. That was in the early spring of 1903. There was a proposition submitted——

Mr. DURAND. 1904.

Q. 1903 or 1904?—A. 1904—yes, 1904. There was a proposition submitted to the lines, members of the Trans-Missouri committee, to consider this suggestion, and there were a number of talks about it between representatives of the interested lines and the representatives of the Standard Oil Company. The railroads did not look with favor upon this proposition to reduce the rate from 5th class, which as I recall it was about 38 cents, on these other products of petroleum than naphtha, from Neodesha to St. Louis, to 15 cents, and they did not like the idea of making a rate from Neodesha on petroleum oil to St. Louis which would be less that the rate from Kansas City, an intermediate point, the rate from Kansas City being the regular 5th-class rate of 22 cents. They further felt that, as on no commodity had they carried between the Neodesha district or the southeastern Kansas district and St. Louis a lower rate than they carried between St. Louis and Kansas City, that it would be bad policy to inaugurate such a practice of rate making, and would tend to break down the rates on other commodities, and would also naturally affect the rate between Kansas City and St. Louis. They did realize, however, that the manner in which the rate on crude oil and naphtha was published left it susceptible to the claim that it applied on all kinds of petroleum-oil products, and it was thought desirable to put
10816 in a rate which would be applicable to all of the petroleum products, and not misunderstood. The lowest rate that they cared to make under those circumstances was the Kansas City-St. Louis rate of 22 cents, and that rate was decided upon after a conference between the lines and was published, as I recall it, effective August 15, 1904. Having established the rate at 22 cents, or an advance of 7 cents to St. Louis, the rate to Kansas City was correspondingly increased from 10 cents to 17 cents, and there was also some revision of the rates to various places in Kansas, which had been put in effect in past years, covering erratic movements, and those rates were raised to the 5th-class figures wherever practicable; not exceeding, however, an advance of 7 cents. This was directly the result of the application from the Standard Oil Company for the privilege to use the 15-cent rate on oil—on all oil products—and was made on the basis of the lowest rate that the railroads felt could be operated from that territory via Kansas City to St. Louis.

Q. Had there been a consistent basis of rates from the Kansas fields to various points to which that product was distributed prior to this time?—A. Generally speaking, the rates on oil from Neodesha and the Kansas field at that time were merely the 5th-class rates. The only movement, however, was a movement to some of the larger cities, crude oil, and a certain quality of naphtha oil to St. Louis and one or two of the larger Kansas towns, such as Wichita, Anthony, and probably Topeka, and the rates to those points had been put in without any system at all. They were not relatively adjusted, they did not show the same amount less than the
10817 5th-class rate to each place; they were not in any respect systematic rates. The rate to St. Louis was an exceedingly low one, 15 cents.

Q. And as I understand it, when the attention of the railroads was called to this condition, and when there had commenced to be a large production of products in that territory, the different railroad representatives did make a consistent basis of rates, as they considered it?—A. That was the idea of the adjustment. They felt that with the increasing production of oil and the desire for movement or for markets, that it was necessary that they should give very particular attention to the rate adjustment, and not have figures in effect to St. Louis or to other places which would compare unfavorably with the rates that then existed on 5th-class bases to other possible markets.

Q. Did any representative of the Standard Oil Company suggest or acquiesce in this increase of rates?—A. No, sir; the representatives of the Standard Oil Company asked for a reduction in the rates, and for the reasons that I explained, the reduction was not believed to be proper by the railroads, and the Standard Oil Company protested, and continued to protest against the probable advance of 7 cents to St. Louis and Kansas City.

Q. This increase, then, to which you have testified, was made by the railroads as a matter of railroad policy, and not at the instance of any shipper?—A. It certainly was not made at the instance of any shipper, and it was made as a measure of protection, you might say, to the railroads. They had had rates in there in effect from Neodesha which had been used in a small way, which certainly were not proper rates to cover a large movement from a large field like the Kansas production.

10818 Q. The increase, then, was over the protest of the Standard Oil representatives, and not at their request?—A. It was over the protest of the Standard Oil representatives, and immediately followed a request from them for a reduction.

Q. It is also charged in this case that there was an increase in the arbitrary weight of 6.4 pounds per gallon on fuel oil to 7.4 pounds. Do you know anything about that increase?—A. Yes; I had something to do with that increase.

Q. Won't you please state in your own way what you know about that, what brought it about.—A. The Western Classification, which applies in the territory west of the Mississippi River, provides for

an estimated weight on petroleum oil products; and prior to 1902 the estimated weight on all petroleum oil products, including crude, was 6.4 pounds per gallon, that having been, as I understand, the figure fixed as representing a fair average of the actual weight of the products. At the time that figure was made by the Western Classification lines there was no production of any consequence of crude oil in the territory of the classification. When oil was discovered in the State of Texas, and produced in considerable quantity, it was found that the easiest market was the fuel trade in the State, and the Texas railroad commission provided certain rates on carload movements of crude oil, the Western Classification weight basis having applied to the movement at the Texas commission rates. The oil actually weighed, however, a great deal more than 6.4 pounds per gallon; it weighed a little bit more than 7.4 pounds, and the railroads were naturally anxious, having been forced to apply a low scale of
10819 rates, to at least get revenue on the actual weight of the commodity moved. They asked the Texas commission to permit them to assess charges on the basis of the actual weight, or in the neighborhood of 7.4 pounds per gallon. The commission denied the request, because primarily that was the weight that was generally effective and used in all of the Western Classification territory, including Texas. The effort of the Texas lines was then directed to secure an advance in the estimated weight in the classification territory generally, and that resulted in a request upon the superintendent of the Western Weighing Association to make certain tests as to the actual weight of petroleum oil products and crude oil. After these tests had been made, and the results obtained, the Western Classification committee decided to take crude oil out of the list of products on which the 6.4 pounds weight applied, and to continue the 6.4 pounds weight on the products, the lighter oils, and made the weight 7.4 on the crude. This in turn affected the weights on the movement from Texas, and from Kansas, and from Oklahoma.

Q. Did the Standard Oil Company or any of its representatives have anything to do with that increase?—A. They had nothing to do with the increase. They appeared before the Western Classification committee, and also talked with a number of the railroad companies, protesting against the increase.

Q. Mr. Leland, do you know what was the custom of railroads prior to the enactment of the present interstate commerce law, and, say, prior to October 1, 1905, with regard to the use of the
10820 sum of the locals where that was less than the through rate, or where there was no through rate?

Mr. KELLOGG. Same objection, that this is incompetent, irrelevant, and immaterial to all this class of testimony, as to the other witnesses, and it is agreed that the objections need not be repeated to each question.

Q. You may answer the question.—A. Prior to the present law it was the practice of the company that I was connected with to apply

the lowest combination of locals. That practice was discontinued primarily because of the rule of the Interstate Commerce Commission which is shown in their circular 15–A on the subject, in which they indicate it to be the law that when a through rate is in effect no combination of locals resulting in a less total can be used without publication of that combination, that the only way in which the through rate can be lowered is by publication. In meeting those combinations in the past during my time with the M., K. & T. we believed we were meeting the competition of other railroads, and that it was usually the practice on the part of all railroads in our territory not to attempt to get higher than the combination of locals on any traffic and for any shipper.

Q. Now, during the time that you were using the sum of the locals, whatever would make the lowest combination, if the use of a State tariff naming rates between points in the same State merely, that was not filed with the Interstate Commerce Commission, was available to make the lowest combination, was that used?—A. We did not pay any attention to that feature at all. We made no distinction between tariffs—State tariffs that were not filed and tariffs that were filed.

10821 Q. And you did that regardless of the fact that the shipment came from or was to go into another State?—A. Yes, sir.

Q. Was that practice engaged in with regard to all shippers and as to all kinds of freight?—A. Yes, sir; and I believe was continued by a number of railroads right up to the time when the Commission indicated that if the State rates were to be used in constructing interstate rates they must be filed.

Cross-examination by Mr. KELLOGG:

Q. Mr. Leland, let me get at that situation down in Kansas. As I understand, the Standard Oil's refinery at Kansas City, which is called Sugar Creek, was completed in 1904?—A. I am not sure of that. I believe it was some time about the latter part of 1904.

Q. And it had a pipe line from Kansas to Sugar Creek, or Kansas City, to that refinery?—A. It has a pipe line now.

Q. Well, it did have then. When it started the refinery, the pipe line was there?—A. I don't know about that.

Q. Well, you know——A. I know that they have a pipe line. I know that they built a pipe line, but I don't know whether the pipe line was constructed and in operation before the refinery was completed, or later on, afterwards.

Q. Well, you found out that it was, didn't you, in your freight traffic matters with that road, with that company——A. We know that the pipe line is there, and we know that——

Q. Well, then——

10822 Mr. MILLER. Let him complete his answer.

A. And we know that their operations of extent were after the pipe line started; yes.

Q. For a long time prior to that time the rate on crude petroleum and naphtha and refined oil from the Kansas field, say from Neodesha or other Kansas fields to Kansas City, had been 10 cents a hundred, hadn't it, and to St. Louis 15 cents a hundred?—A. It had been 15 cents on crude oil and naphtha only to St. Louis.

Q. And 10 cents to Kansas City?—A. It had been 10 cents to Kansas City on crude petroleum only.

Q. Now, isn't it a fact that the Standard Oil Company did actually use that rate on all the products of petroleum; that is, naphtha and refined oil, and on crude oil?—A. I don't think they did, because the——

Q. Didn't they do it over your road?—A. No, sir; the Standard Oil Company did not ship over our road.

Q. Not over the Missouri Pacific?—A. The M., K. & T.

Q. Oh, I beg your pardon. Now, there are no independent refineries at Kansas City—were none at that time, were there?—A. No, sir. There is none now that I know of.

Q. Only the Standard Oil's?—A. Only the Standard Oil's.

Q. There were independent refineries and independent crude oil producers in the Kansas field, were there not?—A. Yes, sir.

10823 Q. A good many?—A. There was one on our line at Humboldt.

Q. It is a fact, then, that about the time the Standard started its refinery at Kansas City the rate on crude petroleum from Kansas to Kansas City was raised to 17 cents, was it not?—A. It is my recollection that it was several months prior——

Q. Well, it was not far from the time——A. To the starting of the refinery.

Q. Not far from that time?—A. No.

Q. And the rate to St. Louis was made 22 cents?—A. Yes, sir.

Q. Now, isn't it a fact that the producers of crude oil in the Kansas field used to ship oil to Kansas City and to St. Louis for fuel oil?—A. Yes, sir.

Q. And they had been using that rate——A. Well, now, I am not sure about that. They shipped crude oil, but whether it was used as fuel oil or whether it was used for gas-making purposes, I am not sure. My impression is it was gas oil entirely.

Q. It was crude oil, anyhow?—A. It was crude oil.

Q. They had a market for it in Kansas City and in St. Louis?—A. They had a small market for it; yes, sir.

10824 Q. The residuum of refined oil also produces a crude oil, doesn't it?—A. It produces what is known as a fuel oil.

Q. A fuel oil?—A. Yes.

Q. And that is sold for fuel in competition with crude oil, isn't it?—A. Yes, sir.

Q. And the Standard produces that fuel oil at its refinery at Kansas City, or did after 1904?—A. Yes, sir.

Q. So the net result was that the Standard refinery could pump its crude oil into Kansas City and sell its fuel oil right in Kansas City

and could pump its crude oil to St. Louis, while the independent had to pay the increase rate of 17 and 22 cents a hundred, hadn't he?—A. I can not answer yes or no to all of that question, because the Standard Oil Company have no pipe line or had no pipe line to St. Louis; it could not do any pumping to St. Louis. It is true that the Standard Oil Company could pipe its crude oil to Sugar Creek and manufacture it into refined products and sell fuel oil resulting therefrom at Kansas City; yes, sir.

Q. Well, the independent had to pay an increased rate of 17 cents?—A. The independent man had to ship in tank cars at a 17-cent rate.

Q. While he formerly had a 10-cent rate?—A. While he formerly had a 10-cent rate.

Q. Now, you also increased, did you not, the weight, so that for every gallon of crude oil the independent had to ship, or anyone had to ship, he paid for 7.4 pounds instead of 6.4 pounds? That is true?—A. Yes, sir; that was done all over the western territory.

Q. You did not increase the weight of the fuel oil coming
10825 from the refineries, did you? That was left at 6.4 pounds, wasn't it?—A. That was and is now 6.4 pounds.

Q. And the fuel oil resulting from the refining of oil weighs more than the crude oil, doesn't it? It weighs 7.6 pounds?—A. I do not think the tests show that.

Q. Well, it weighs as much?—A. It weighs as much.

Q. Now, what reason was there for not increasing that, too?—A. As I recall the reason in the Western Classification committee it was that if we took the crude oil—unmanufactured oil—entirely out of the list of products and crude on which the average weight was 6.4 pounds, that it would so reduce the—I have gotten this thing just a little bit wrong. If we took the fuel oil out of the list of other manufactured oil products, and in addition took out the crude oil from that list, it would so reduce the actual average weight on the balance that 6.4 pounds would be too high for the balance of the commodities, and on that account fuel oil—not crude oil, but fuel oil—was left in the list and the 6.4 pounds average continued; in other words, the 6.4 pounds estimated weight was applied on all oil the product of refining, and the crude oil as it came out of the ground was 7.4 pounds.

Q. Now, the Standard Oil Company representatives appeared before your traffic association and protested against the increase of weight in fuel oil coming from refined oil, didn't they?—A. They protested against that and against the crude oil——

Q. They protested against that, didn't they?—A. Yes.

Q. And you did raise the weight of the crude, but you did not raise the weight of fuel oil coming from the refined
10826 oil?—A. The result is that we did not; yes, sir. The reason is we would have to reduce the weight on the balance of the products in order to be fair.

Q. Do you know whether that is true? Did you weigh the balance of the products to find out?—A. We had estimates; yes, sir; we had tests made at several places in the United States by several different people.

Q. Now, isn't it a fact that all over the United States, with the exception of from Kansas, the standard is 6.4 for crude?—A. No, sir.

Q. Where is it, then?—A. In all the territory west of the Mississippi River covered by the Western Classification the weight on crude pertoleum is 7.4 pounds.

Q. Well, I am excepting that. I mean except in your Western Classification.—A. I don't know what the——

Q. In all the other classifications in the United States, isn't it?—A. I don't know what it is in the classifications.

Q. And in Texas?—A. In Texas it is 7.4.

Q. I thought it was 6.4.—A. Locally in Texas it is 7.4.

Q. The result was the Standard company shipped its fuel oil taken from its refinery at the weight of 6.4 while the independent producer of crude oil had to pay 7.4?—A. The independent refiner had exactly the same opportunity.

Q. But the independent did not have any refinery at Kansas City, did he?—A. No; but he had refineries out in the territory—out in the crude field.

Q. He had to pay the rate up to Kansas City?—A. In fact
10827 there are about nine such independent refiners in Kansas now.

Q. Don't you remember that Mr. Bogardus protested against this increase of weight and that the Western Weighing Association repeatedly weighed the fuel oil coming from refined oil and weighed the crude oil, and reported against the Standard Oil, and asked that the weight be raised to 7.4, and yet you did not do it?—A. I do not know that that is so. I do know, however, that if the fuel oil was taken out of the list the average of 6.4 would not be fair on the balance.

Q. Do you know that actually? Have you got the tests?—A. I have seen figures that indicate that; yes.

Q. On Kansas crude oil?—A. On all of it.

Q. You swear that is true as to the products of crude oil of Kansas?—A. Well, I am speaking entirely from memory. That was true in the territory of the classification.

Q. Was the protest of the Standard Oil against the raising of rates from 13 to 22 cents made to you personally?—A. It was made to the general freight agent of our road, Mr. Grossclose.

Q. You did not hear it?—A. Mr. Grossclose repeated it to me in a memorandum, a copy of which memorandum was furnished to the Commission in this case——

Q. But you did not hear their protest at all? You personally do not know anything about it except what you learned from the freight agent?—A. I am not clear in my recollection about that.

Q. The protest was not made to you?—A. The protest was made to my superior officer.

10828 Q. Now, why should the Standard protest when it did not ship anything from Kansas to Kansas City?—A. The protest was about the raising of the rate to St. Louis.

Q. Do you know that the refinery at Neodesha shipped any oil to St. Louis?—A. I have been told by representatives of the Missouri Pacific and the Frisco, on whose lines Neodesha is located, that there was a fair movement to St. Louis.

Q. It is not probable they would ship refined oil into Kansas City when they had a refinery there, is it?—A. They might have been making something in Neodesha they did not make at Kansas City.

Q. You don't know about that?—A. I don't know about that.

By Mr. MARTYN:

Q. This increase in weight took place in 1902, didn't it?—A. My recollection is that it took place in——

Mr. KELLOGG. 1903.

WITNESS. Yes; 1903.

Q. And a considerable period of time before the completion of the pipe line?—A. Yes, sir.

Q. Did you receive a letter from your general freight agent at about the time of the consideration of the increase in rates in Kansas with regard to this matter?

Mr. MILLER. Consideration of the proposition to bring the products of petroleum within your 15-cent tariff to St. Louis?

WITNESS. Yes, sir; the consideration of the rates to Kansas City and St. Louis started, as I stated, with a request from the Standard Oil Company representatives that the 15-cent rate to St. Louis
10829 be made to apply on all the products of petroleum, and that the weight in barrels be reduced from 30,000 to 24,000 pounds. A memorandum was made to me by the general freight agent on April 16th in respect to that subject.

Mr. MILLER. 1904?

WITNESS. 1904.

Mr. MILLER. Who was your general freight agent?

WITNESS. Mr. W. B. Grossclose.

Q. Have you that memorandum, or a copy of it?—A. Yes, sir; this is a copy of that memorandum.

Q. Where did you obtain that?—A. I obtained this from the files of the M., K. & T. office.

Mr. MILLER. Was that signed by Mr. Grossclose?

WITNESS. It was made on the typewriter, in the shape of a memorandum, an office memorandum from one room to another.

Mr. MILLER. Made at the time?

WITNESS. Yes, sir.

Mr. MILLER. Part of the official files?

WITNESS. Part of the official files of the M., K. & T.

Mr. MILLER. Was it in your hand at the time it was made?

WITNESS. It was in my hands at the time it was made; yes, sir.

Q. And that was about the time of the date that it bears?—A. Yes, sir; it came right in to me from his office.

Mr. MARTYN. I offer this in evidence, and as it is the original paper from the files, I ask leave to substitute a copy.

Mr. KELLOGG. There is no objection to that.

A copy of the paper before the witness was marked "Defendants' Exhibit 196."

10830 Mr. MILLER. On yesterday, and at the time I called the attention of the examiner to the fact that the Government had subpœnaed Mr. Martin before he got away, counsel for the Government made some arrangement with Mr. Martin with respect to the examination of percentage sheets or division sheets that he asked Mr. Martin about, which applied to Grand Trunk Tariff A–944, and I understood that Mr. Schindler, one of the representatives of the Government, one of the experts for the Government, was to be permitted to go over to the Grand Trunk office and examine these percentage sheets, either last evening or this morning; and I would like now to ask the counsel for the Government if the witness, Martin, produced or caused to be produced to Mr. Schindler, the representative for the Government, at the instance of counsel for the Government, those division sheets.

Mr. KELLOGG. (After conferring with Mr. Schindler.) Mr. Schindler went over this morning and was given access to the percentage sheets. I have not seen them until this moment, because he did not get back here until a little while ago, and after I get a chance to talk to him I will find out just exactly, and will get copies of them, Mr. Miller, so that that matter is satisfactory.

Mr. MARTYN. With regard to sheet 2 of defendants' Exhibit 146, an inspection shows that the same information was copied with respect to Parkersburg, West Virginia, as with respect to Marietta, Ohio, the rates as purporting to have been copied from peti-

10831 tioner's exhibit being in some instances incorrect to the extent of one-half a cent, even as to those shown from Marietta, Ohio. Sheet 2 of this exhibit has been rewritten and the rates as shown on petitioner's Exhibit 586 have been correctly copied. The rates as originally shown on defendants' Exhibit 146, under the column headed "Correct rate," being the same as to Marietta in the corrected exhibit as in the original. Thus as to three points now shown from Parkersburg, West Virginia, being shown as they appear in Baltimore & Ohio and Southern Railway tariffs, the I. C. C. numbers of which are shown on the corrected exhibit; and we tender these tariffs, namely, Baltimore & Ohio I. C. C. 4537 and Southern Railway 5618 for the inspection of the Government counsel. The rate given on the original exhibit from Parkersburg to Charleston, South Carolina, is withdrawn, as the rate as stated in Government exhibit is correct as we find it. The effect of this is to make differences in rate in each instance somewhat greater than those shown on the original defendants' exhibit. We ask that this be marked "Defendants' Exhibit 146, sheet 2, corrected."

The paper was so marked.

Mr. MARTYN: With regard to defendants' Exhibit 142, Government counsel has furnished a memorandum of mileage to certain points shown on this exhibit, correcting the mileage according to their contention. Defendants' Exhibit 142 has been rewritten, and the mileage contended for by Government counsel inserted in each instance. The memorandum of short-line mileage to these several points, as furnished by the Government, is correct, as we understand it, according to the routes which they designate. In some
10832 instances these do not seem to us to be workable routes, for example, the memorandum furnished by the Government of the mileage from Toledo to St. Joseph, Michigan, is that over the Lake Shore from Toledo to Goshen, Indiana; over the Big Four from Goshen, Indiana, to Benton Harbor; and thence over the Pere Marquette, a distance of 2 miles from Benton Harbor to St. Joseph, whereas Pere Marquette is shown by the Official Railway Guide to have its own rails from Toledo to St. Joseph. In computing the mileages shown in defendants' Exhibit 142, the mileage so shown appeared to be the mileage over lines according to which traffic would probably have moved. The memorandum furnished by the Government appears, however, to be the short-line mileage between those points. I offer in evidence this exhibit as rewritten, and ask that the same be marked "Defendants' Exhibit 142, corrected."

The paper was so marked.

Mr. MARTYN: As to defendants' Exhibit 144, the memorandum furnished by the Government, showing Government counsel's computation of mileage, in three instances shows mileage figured over electric lines that appear in the Official Railway Guide with the word "Steam" in parenthesis under the title of the railroad. We produce and offer for the inspection of the Government a copy of Central Freight Association circular No. 4482, dated July 20, 1903, to the effect that railroads would not interchange traffic with electric roads. In computing the mileage shown in defendants' Exhibit 144, as originally prepared, such mileage was not used. The use of this, however, does give the figures contended for by the Government. As to the other points, the short-line mileage appears to be as
10833 contended for by the Government except as to Bloomington, Illinois. As to that point we think the figures of the Government are in error, and furnish the Government a memorandum of a computation which we make, showing the mileage to be 269 miles. We have accordingly rewritten defendants' Exhibit 144, inserting in lieu of the mileage as shown in the exhibit as originally prepared the mileage contended for by the Government in every instance except as to Bloomington, Illinois, and have changed the rate per ton per mile to correspond to the mileage as so corrected, and I offer in evidence this exhibit so rewritten, and ask that the same be marked as "Defendants' Exhibit 144, corrected."

The paper was so marked.

Mr. MARTYN. And we desire to withdraw the original exhibits as offered by us and for which we have furnished corrected exhibits,

namely, sheet 1 of defendants' Exhibit 122, defendants' Exhibit 120, sheet 1 of defendants' Exhibit 177, sheet 2 of defendants' Exhibit 146, and defendants' Exhibit 142, and defendants' Exhibit 144.

An adjournment was here taken until Tuesday, October 27, 1908, at 10.30 o'clock a. m., at the custom-house in the city of New York, N. Y.

Mr. KELLOGG. It is understood that the foregoing statement of Mr. Martyn, referring to defendants' Exhibit 146, two sheets, defendants' Exhibit 142, and defendants' Exhibit 144, are not to be understood as stipulations of fact or admissions on the part of the Government.

10834 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, October 27, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, pursuant to adjournment, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, Mr. J. Harwood Graves. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

EDWARD T. JOHNSON, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Your name is Edward T. Johnson?—A. Yes, sir.

Q. And you reside at Buffalo, New York?—A. Yes, sir; that is, my office is there. My residence is East Aurora.

Q. And what is your business?—A. Division freight agent, Pennsylvania Railroad.

Q. At Buffalo?—A. Yes, sir.

Q. Headquarters at Buffalo?—A. Yes, sir.

Q. And what lines of the Pennsylvania Railroad are within your jurisdiction? What is the division?—A. The Buffalo division and the Chautauqua division; north of Corry and Irvington on the Chautauqua division, and north of Emporium on the Buffalo division, which would also include the Rochester branch.

10835 Q. How long have you been in the railroad business?—A. Since 1867.

Q. And with what roads successively have you been connected, and in what capacities?—A. Originally with the Buffalo & Erie, now a part of the L. S. & M. S.; at first as clerk in the cashier's office, second as cashier; then with the Buffalo, New York & Philadelphia Railway, first as paymaster on construction, second as general freight agent; then with the companies that succeeded through reorganization, until——

Q. Succeeded the Buffalo, New York & Philadelphia?—A. Yes, sir. Until August 28, 1900, when the W. N. Y. & P., as it was then called, was leased by the Pennsylvania Railroad.

Q. The Buffalo, New York & Philadelphia, through reorganizations, became the Western New York & Pennsylvania Railroad?—A. Yes, sir.

Q. And then later that was leased, in 1900, to the Pennsylvania Railroad?—A. Yes, sir.

Q. And during what years were you connected with the Buffalo, New York & Philadelphia and its successor the Western New York & Pennsylvania?—A. From August—from 1872 up until the time that it was leased to the Pennsylvania Railroad.

Q. And since it was so leased, in August, 1900, that road has been under your jurisdiction as division freight agent?—A. That part of the road; yes, sir.

Q. During the time that you have been connected with this line of railroad, now a portion of the Pennsylvania system, have you
10836 been familiar and connected with the making up and the construction of freight tariffs in the course of your duties?—A. Yes, sir.

Q. Evidence has been introduced here concerning a tariff of the Western New York & Pennsylvania road, and the tariff has been admitted in evidence, naming a petroleum rate of 9 cents per barrel from Olean to Rochester. Are you familiar with that rate?—A. Yes, sir.

Q. How long have you been, since it was put in?—A. Yes, sir.

Q. Did you have to do with the putting in of that petroleum rate?—A. I did.

Q. When was that done and how long has that rate prevailed?—A. The rate of 9 cents per barrel——

Mr. KELLOGG. Wait a moment. The tariff is the best evidence of that. It is objected to as secondary evidence. If he has the tariff showing it, or if he can produce it, I would like to see it.

Q. You may answer, Mr. Johnson.—A. The rate of 9 cents has been in force since October, 1889. Prior to that the rate was 7 cents per barrel for part of the time, and prior to the establishment of the 7-cent rate, the rate was $7 per car, and originally it was $6.50 per car, Olean to Rochester.

Q. How long after the Western New York & Pennsylvania line, extending from Olean to Rochester, was constructed and put in operation was that rate of $6.50 per car put in?—A. Very shortly after the completion of the road, in 1883.

10837 Q. Now in putting in the rate per barrel, which I think you said was originally 7 cents——A. Yes, sir, the barrel rate was first established at 7 cents.

Q. About when was that?—A. I think it was along 1886 or 1885; I can not give the exact date.

Q. Were there rates by another route and from a competitive point in existence that had to do with the naming of that rate of 7 cents?—A. Yes, sir.

Q. And from what other point?—A. From Salamanca to Rochester.

Q. And when was the rate of 7 cents changed to the 9 cents per barrel?—A. Some time in October, 1889.

Q. And that rate has been in force ever since, has it?—A. It has.

Q. And is still in force?—A. Yes, sir.

Q. It has been testified here, or evidence has been offered tending to show that in the application of that rate to shipments from Olean, the rate has been used on shipments destined to points off of your line in Vermont, say Burlington, and that for that transportation a combination of rates has been used made up of this 9-cent per barrel rate of your road from Olean to Rochester, and a rate from Rochester to Norwood, New York, over the Rome, Watertown & Ogdensburg division of the New York Central, of 9 cents per hundred, and a rate of $23 per car over the Rutland road from Norwood, New York, to Burlington, Vermont; and evidence has been offered tending to show that while the rate for the transportation from Norwood, New York, to Burlington, Vermont, was under a filed tariff

10838 of the Rutland road, the rate of 9 cents over the New York Central from Rochester to Norwood was under what is known as a State tariff or an unfiled tariff, not filed with the Interstate Commerce Commission, and that the rate of 9 cents per barrel over your road was not a filed rate. Do you know what the custom of railroads was, universally or generally, with respect to so using the sum of the locals for transportation like that, where there was no through rate from the initial point to the destination available over that route?—A. The locals would be used.

Mr. KELLOGG. One moment. That is objected to on the ground that it is incompetent and immaterial. The custom to violate the interstate commerce law can not make it legal, and in this case there was a through rate, published and filed with the Interstate Commerce Commission.

Q. You know what the custom was, do you?—A. Yes, sir.

Q. How general or universal was that custom?—A. It was very general.

Q. Do you know whether or not the railroads with which you are familiar, acting under the advice of their counsel, regarded that under the interstate commerce act, prior to, say October 1, 1905, they had the right to use their unfiled State rates for the purposes of such transportation over their road within a State?

Mr. KELLOGG. Same objection.

A. That was my practice.

Q. I did not hear you.—A. It was my practice.

Q. Do you know what the fact was as to whether the rail-

10839 roads so carrying out that practice were advised and regarded that as lawful under the interstate commerce act?—A. I was so advised.

Q. By the counsel of your road?—A. Yes, sir.

Q. And acted in accordance with that advice in adopting that practice and carrying it out?—A. I did.

Mr. KELLOGG. This testimony may all be taken subject to the same objection first entered.

Mr. MILLER. Oh, yes.

Mr. KELLOGG. All right.

Mr. MILLER. I offer in evidence the tariff that has been referred to frequently in the evidence, being I. C. C. S. No. 459, a joint through tariff on petroleum and its products in carloads and less than carloads, Pennsylvania Railroad Company, in connection with the New York Central & Hudson River Railroad, Boston & Albany, and the Rutland Railroad, from Olean, New York, New York Central & Hudson River Railroad, Boston & Albany Railroad, and Rutland Railroad, to stations named within.

Mr. KELLOGG. That has been offered in evidence.

Mr. MILLER. Mr. Martyn said it had not.

Mr. KELLOGG. Mr. Martyn is entirely mistaken. We offered it in evidence ourselves. It is in evidence.

Mr. MILLER. Very well.

Mr. MARTYN. If it is in evidence, all right.

Mr. KELLOGG. It is in evidence.

Mr. MILLER. Then, with the understanding that it is already in evidence on the offer of the Government, I withdraw the offer.

10840 Mr. KELLOGG. The Government offered it in evidence.

Q. I show you the tariff that I have inquired about, being I. C. C. S. 459, a joint through tariff on petroleum and its products in carloads and less than carloads, of the Pennsylvania Railroad in connection with the New York Central, Boston & Albany, and Rutland, from Olean to stations on those other roads, and ask you whether you are familiar with that tariff [handing witness tariff].—A. Yes, sir.

Q. Did you have to do with the making and putting into effect of that tariff, Mr. Johnson?—A. I did.

Q. What did you have to do with it?—A. Approving the work and the rates that are named therein; agreeing to them with the connecting lines so far as the through rate was concerned.

Q. This tariff appears by its terms to have been issued March 3, 1904, taking effect April 10, 1904. At that time were you division freight agent——A. Yes, sir.

Q. —of the division of the Pennsylvania Railroad that you have referred to?—A. Yes, sir.

Q. You are familiar, I suppose, with the statement on this as follows: "Route in accordance with agreed percentages and as designated within?"—A. Yes, sir.

Q. You may state whether or not that tariff names a rate on petroleum and its products from Olean to Boston over a route running from Olean to Buffalo and thence—I mean over a route running from Olean to Rochester over your line, and thence over the Rome, Watertown & Ogdensburg division, or any other line from

10841 Rochester to Norwood, and thence on to Burlington, Vermont, or over any route running from Olean to Rochester direct, and thence East?

Mr. KELLOGG. That is objected to as incompetent, calling for the conclusion of the witness, and the tariff is the best evidence.

Q. You may answer.—A. It does name a rate from Olean to Boston via Rochester, N. Y. C. & H. R. R. R., and West Albany. The R., W. & O. division is not concerned in that rate.

Q. What is the rate named?—A. 19 cents.

Q. Now, does it name a rate over the Rome, Watertown & Ogdensburg division of the New York Central, from Rochester via Norwood or to Norwood, New York?—A. It does name a rate from Olean to Norwood.

Q. And what is that?—A. 26½ cents.

Q. Does it name a rate over a route from Olean, via this route to Rochester and thence to Boston, over—I think you have answered that?—A. I did answer that, yes, sir.

Q. Does it name a rate from Olean via Rochester to common points in Vermont taking the Boston rate——A. No, sir.

Q. ——of 26½ cents?—A. No, sir.

Q. I show you two documents, introduced in evidence as defendants' Exhibits 114–A and 114–B, and ask you whether those are the percentage sheets referred to upon the tariff about which you have just been asked?—A. They are.

Q. Now, in determining the application of the Boston rate of 26½ cents named in that tariff, will you point out on the percentage
10842 sheets referred to in the tariff what the route that would take that rate is?

Mr. KELLOGG. What is that? There is no 26½-cent rate to Boston.

Mr. MILLER. What is that?

Mr. KELLOGG. 19½ cents to Boston.

WITNESS. Straight 19.

Q. Well, I intended to refer to the 26½ cents to Norwood on that tariff.—A. Yes, sir.

Q. On the Rome, Watertown & Ogdensburg division of the New York Central road, with respect to which the tariff says, "Route in accordance with agreed percentages," what is the route and the only route that that tariff would apply to from Olean to Norwood, naming this rate of 26½ cents?

Mr. KELLOGG. That is objected to as incompetent. The tariff is the best evidence.

A. Via Buffalo, Olean to Buffalo, Buffalo to Suspension Bridge, Suspension Bridge via the R., W. & O. through Charlotte and the eastern junctions to the point of destination, Norwood.

Q. Do you know whether or not it was the practice of the railroads with which you are connected or familiar to file with the Interstate Commerce Commission tariffs making rates entirely from one point to another where the road of connecting points was entirely within the limits of a single State, and the tariff named no rates covering transportation from one State into another prior, say, to October 1st, 1905?

Mr. KELLOGG. That is objected to as irrelevant, incompetent, and immaterial. The custom of using tariffs unpublished can not

10843 make them legal, and the same objection may be taken to all this class of testimony.

Mr. MILLER. Sure.

Q. What was that custom and practice? Was it to file or not to file such tariffs?—A. They were never filed prior to——

Q. Prior, say, to three years ago?—A. Prior to August 28, 1908, we did not file State rates.

Q. 1906, you mean?—A. Prior to August 28, 1906, we did not file State rates.

Q. Do you know whether or not the New York Central Railroad, at the time when this tariff S. 459 was made and thereafterward, were or were not willing to prorate or join in through tariffs from Olean via Rochester to points on their line, on the Rome, Watertown & Ogdensburg Railroad?—A. Beyond the rates that were named here we understood they were not.

Q. Well, the rates named there were, as you say, via Buffalo and Suspension Bridge?—A. From Olean.

Q. From Olean. Now, I speak from Olean via Rochester to points on the Rome, Watertown & Ogdensburg division.—A. They had no percentages via Rochester from Olean, and therefore could not establish rates via that route.

Q. Do you know why the New York Central refused to prorate or to join in through rates from Olean via Rochester?—A. I was told that they desired to have the traffic move from the refinery at Buffalo.

Q. Why was that?—A. To obtain a greater revenue, by not dividing with the W. N. Y. & P. the rates from Olean, taking

10844 Buffalo rates as a general proposition, class rates, etc. Olean was known as a Buffalo rate point eastbound.

Q. The difference in the rate from Rochester, you say, to Norwood, and from Buffalo to Norwood, was substantially the same as the rate you got from Olean to Rochester?—A. I do not know as to Norwood, but my understanding relative to New England points is that the difference between the Buffalo and the Rochester rate was practically the rate that we made. It varies——

Q. Why did you make it?—A. On those through shipments in order that we might get a share of the traffic from Olean as against the Buffalo refinery.

Q. Originally, when the rate was established between Olean and Rochester, you say that getting a share of the traffic going via Salamanca had to do with your establishment of the rate?—A. That was the crude oil for the Rochester refinery as it was then.

Q. That was for or had to do with the transportation into refineries, between the refineries?—A. From the pipe line to the refinery.

Q. Originally it was the transportation of oil to the refinery at Rochester?—A. Yes, sir.

Q. In the original establishment of the first rate over your road, what other consideration led to the naming of the rate that you

named?—A. Why, the securing of the traffic that was then moving by competing lines and building up the traffic at Rochester.

10845 Q. Did the threat or apprehension of the pipe line to Rochester have anything to do with it, too?—A. There was no direct threat, but it was our understanding that if we could not make a low enough rate a pipe line would be built.

Q. Did that have to do with your road establishing the rate?—A. It did. It had its influence on our arrangement.

Q. After the establishment of the rate for the transportation of crude oil, was the rate used for the transportation of anything else?—A. It was subsequently used for the transportation of refined products going to eastern points where we could not establish through rates.

Q. And that was not the fault of your road that you could not establish the through rate?—A. No, sir.

Q. How did the rate you got, the 9-cent per barrel rate from Olean to Rochester, compare with your proportion of the through rate, as compared with cases where you had through rates?—A. Compared with those cases where there were through rates, in some cases the division that we receive is even lower than 9 cents per barrel and in some cases a little higher. They varied.

Q. In making and applying the rate of 9 cents per barrel from Olean to Buffalo, did you know what the rate from Rochester to Norwood was?—A. I do not think your question is correct; excuse me. You said from Olean to Buffalo. You mean from Olean to Rochester.

Q. I mean from Olean to Rochester, yes.—A. I did not. I had no knowledge of that until the trial in Rochester of the New York Central.

10846 Mr. KELLOGG. You had no knowledge of what?

WITNESS. I had no knowledge of the rate of the New York Central from Rochester to Norwood until the trial of the New York Central at Rochester.

Q. You refer to the trial of the case of the Government against the New York Central?—A. Yes, sir.

Q. That was within the last year or so. Is that right?—A. Yes, sir; two years ago I think it was—no, a year ago this last summer.

Q. Prior to that trial, or the occasion that you speak of, had you any knowledge of the rate of $23 a car over the Rutland Railroad from Norwood east into Vermont?—A. I had not.

Q. At the time and during the time that this rate of 9 cents per barrel was used on the transportation over your road from Olean to Rochester, state what the fact was as to whether you regarded that rate as the lawful rate and that tariff as the lawful tariff to be applied on that transportation.

Mr. KELLOGG. That is objected to as incompetent, calling for the conclusion of the witness, and entirely immaterial.

A. I did.

Q. Do you know how the tariff naming the 9-cent rate was kept by your agent at Olean, among the tariffs there?—A. I know at least part of the time it was filed with the tariffs. I could not say further——

Mr. KELLOGG. Filed where?

WITNESS. At Olean.

Q. In what form was it kept for use?—A. The rate sheet was filed in his tariff book with any other tariff.

10847 Q. That is, they were put together in a tariff book?—A. Yes, sir, and kept there.

Q. And this tariff was kept with all the other tariffs?—A. It was.

Q. Do you know, and if so you may state, to how many people in the employ or service of the Pennsylvania Railroad, to how many people of that kind this 9-cent tariff was accessible?—A. The various copies of the tariff were accessible to seven or eight hundred people, employees.

Q. The Government has offered evidence tending to show that upon the shipments under this tariff over your road from Olean to Rochester the waybilling contained no rate, but that the transportation was, according to the term used, "blind-billed." Do you know what that meant in railroad parlance, what was the effect of leaving the rate off the waybill?—A. It meant that the charges of all the blind-billed shipments were to be collected from the auditor's office instead of by the agent.

Q. Did that tend to any secrecy, beyond the fact that the conductor or the trainmen handling the waybill would not know the rate?—A. No more so than if the charges had been there.

Q. Then the instruction to blind-bill meant merely in effect that the collection of the freight was to be through the auditor's office or the general office of the railroad?—A. Yes sir, and covering not only the shipments from Olean, but any other point where the same parties would be shipping, a like blind-billing was in force.

Q. For what reason was that method adopted and used?—

10848 A. We were requested to collect the charges on shipments of the Standard Oil Company from the New York office. When that arrangement was made, that covered shipments from Oil City, Corry, and Olean, and other points where they were shipping, and the auditor made one bill and collected the charges direct.

Q. Was that for any other reason except for convenience and directness?—A. It was not.

Q. Was that done with the intention of concealing the rate from any person or anybody entitled to know it?—A. It was not.

Q. I think it appears also that the weights were omitted from the waybills. In the case of shipments like these, in tank cars, was there any occasion for the weight being put in the waybill?—A. There was no occasion for it. They were in all cases governed by the gauge.

Q. That is, the weight of a tank car is its capacity as listed in the gauge book?—A. Yes, sir; that is the rule for charging the weight.

Q. And that book is kept where?—A. Kept in all the offices, issued by the Central Freight Association.

Q. Then the auditor's office has access to that book? If he has the number of the car, he knows how many pounds the car carries?—A. Everybody that is concerned in oil traffic has the book.

Q. And having the number of the car engaged in the transportation, a clerk in the auditor's office can determine the weight or the number of barrels that are carried in that car, from that gauge
10849 book?—A. He determines the number of gallons, and then estimates the weight at 6.4 pounds to the gallon.

Q. Was the rate of 9 cents per barrel from Olean to Rochester a remunerative rate to the railroad?—A. We so considered it.

Q. Now, referring for a moment to the rates from points in Pennsylvania where refineries other than refineries of the Standard Oil Company are located, you have been familiar with the establishment of those rates over your line, have you?—A. Yes, sir.

Q. And had to do with them?—A. Yes, sir.

Q. State whether or not any one connected with the Standard Oil Company or its enterprises had anything to do, so far as you know, with the establishment of those rates from those Pennsylvania points where so-called independent refineries are located.—A. They did not.

Q. Did anybody connected with the Standard Oil Company ever request, directly or indirectly, that those rates be made high, or have anything whatever to say about the establishment of those rates?—A. Never, as far as I am concerned. I never knew of any such request in any way, shape, or manner.

Q. What was it, if you know, that moved or controlled the railroad in the establishment of rates from those points?—A. The comparison with rates from other points that had been already established—comparison with the class rates, and other factors that entered in.

Q. Was the railroad governed or influenced by anything else other than the policy of its own business and the conduct of
10850 its own business from those points?—A. The W., N. Y. & P. was not.

Q. I show you a tariff which has been introduced in evidence as defendants' Exhibit 124–A, being tariff I. C. C. No. A–944 of the Grand Trunk Railway system and the Detroit & Toledo Shore Line in connection with certain other listed railroads and connections, as specified in the agents' guides and billing lists mentioned hereon, being a joint freight tariff on petroleum products, carloads from Toledo, Ohio, to points in Central Freight Association territory and Trunk Line territory, effective December 12, 1904. I also show you, in connection with it, the Shippers' and Agents' Guide No. 9 of the National Despatch-Great Eastern Line, being a book that has been exhibited to other witnesses and referred to in the testimony herein. I ask you to look at these documents, to examine them, and state whether that tariff establishes and names a rate applicable

to the transportation of petroleum and its products from Toledo, Ohio, to Burlington, Vermont.

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. It does.

Q. What rate does it name?—A. From Toledo, Ohio, to Boston, 27 cents per 100 pounds.

Q. And is that the rate which is applicable to Burlington, Vermont?—A. Yes, sir.

Q. In this connection I ask you whether in making this answer you observed and took into consideration the following, which
10851 appears on page numbered 1 of the Shippers' and Agents' Guide No. 9, under the heading of "Important instructions for the guidance of shippers and agents," namely, "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide; but such shipments will be subject to special tariffs and local regulations of railroads interested."—A. I took that rule into consideration.

Q. I observe that certain tariffs of your road bearing an I. C. C. number contain at the top of the tariff words in effect as follows: "To be posted in each freight station as required by law," and other tariffs contain a statement, "Not to be posted." Under what circumstances, if you know, or in what cases were those words put there, and for what purpose?—A. Where there were State rates, and did not involve any question of interstate.

Q. Then you would put what on the tariff?—A. To be posted, the first sentence that you read there.

Q. Where it was an interstate rate?—A. Where it was an interstate rate, then we notified the agent that it was to be posted in accordance with the law.

Q. And that referred to what law?—A. The interstate law.

Q. The interstate commerce act?—A. Yes, sir.

Q. And the words "Not to be posted" were put upon what sort of tariff?—A. State tariff—intrastate.

Q. That meant tariffs on lines wholly within a State?—A. Naming rates between points that were entirely within one State.

10852 Q. The tariffs that were so marked "Not to be posted," you say that distinguished a tariff naming a rate between points lying wholly within a State from a tariff naming rates on a line extending from one State into another?—A. If there were any interstate rates in a tariff the tariff was published. Many of our tariffs contained both interstate and intrastate rates, and necessarily such a tariff, on account of the interstate rates, was marked "To be posted." Any tariff where the rates were from and to points within any one State, those prior to August 28, 1906, were not posted, not intended to be posted.

Q. Was that true of all sorts of State tariffs on all sorts of commodities?

Mr. KELLOGG. Wait a moment. The tariffs are the best evidence. The only evidence so far is that the one used by the Standard Oil was not posted. If he has any other, let him bring that here.

Mr. MARTYN. That is not a correct statement of the record.

Mr. KELLOGG. It is.

Mr. MARTYN. The evidence is it was used on all kinds of traffic, and the Pennsylvania tariff is in the record, a very large one, consisting of about twenty pages, covering all kinds of commodities. That is an exhibit in the record.

Q. What is the fact about that? Was it confined to oil tariffs, this statement on the tariff "Not to be posted" in the case of State tariffs, or did it apply to all State tariffs, on every commodity?—A. Applied to all State tariffs and every commodity.

Q. That is, where the tariff was all together, a tariff naming rates on transportation between points wholly within a State?—A. Yes, sir.

Q. No matter what the commodity was?—A. Without any regard to the commodity.

Q. Was that done for the purpose of concealing the rate?—A. It was not.

10853 Q. How were these State tariffs that were so marked "Not to be posted" kept for use among the tariffs of your company?—A. They were in the same file at the different agencies.

Q. As the interstate tariffs?—A. Yes, sir.

Q. In the same file with the interstate tariffs?—A. The agent in common practice only had one file, and he kept all tariffs together.

Q. Now, take the tariff of your road, I. C. C. S. No. 459, to which I have referred. Supposing that tariff had been confined to transportation entirely within the State of New York and to stations on the Rome, Watertown & Ogdensburg Railroad in New York alone, then, according to your practice, would that tariff be filed with the Interstate Commerce Commission?

Mr. KELLOGG. Same objection to that.

A. It would not.

Q. And in such case, instead of bearing the mark, "To be posted in each freight station," as required by law, how would it be marked?—A. The notation would have been, "Not to be posted."

Q. With respect to transportation from Olean to Rochester on shipments destined to beyond, say, to Burlington, Vermont, was there between your road and the New York Central road any common arrangement or any arrangement whatever with respect to that transportation?

Mr. KELLOGG. That is objected to as incompetent. That is a conclusion of law. The documents in evidence show what the arrangement was.

A. No, sir.

10854 Q. Did your road or your auditor's office have anything to do with the payment or collection of freight charges on that transportation over the New York Central or the Rutland Railroad?—A. No, sir.

Q. Your road collected what charges?—A. From Olean to Rochester.

Q. Over your own line?—A. Yes, sir.

Q. Alone?—A. Yes, sir.

Q. Did your road or your office or your agent have anything to do with naming a rate to the shipper over the New York Central from Rochester to Norwood on those shipments, or over the Rutland?—A. No, sir; we did not.

Q. Did you have anything to do with the naming of any other rates upon that transportation except upon your own road from Olean to Rochester?—A. On through commodities; yes, sir.

Q. No; I mean on this transportation.

A. On that transportation; no, sir; excepting, of course, wherever the tariffs showed through rates.

Q. I mean on this transportation that went on your 9 cents a barrel rate from Olean to Rochester, and then went on over the New York Central on the 9 cents per hundred to Norwood, and then the $23 per car from——A. We had nothing whatever to do with it beyond Rochester; knew nothing about it.

Q. Knew nothing of the rates and never collected any rates?—A. No, sir.

Q. Had nothing to do with the collection of the rates?—A. We did not.

Q. Mr. Johnson, I suppose in your long experience in the railroad business you have a recollection as to the manner of
10855 rate-making prior to the enactment of the interstate commerce act in 1887?—A. Yes, sir.

Q. And also as to whether railroad rates were then stable and uniform or varying as between different shippers? You knew about that, I suppose?—A. Yes, sir.

Q. And as to the frequency of giving rebates or preferential rates to different shippers?—A. They were made.

Q. How common was that in the conduct of the transportation business during the years prior to the enactment of the interstate commerce act in 1887?—A. It was quite common.

Q. Was it confined to one line of business or one shipper, or was it general?—A. General; all lines.

Q. And all commodities?—A. Very nearly all. I do not know of many exceptions.

Q. Prior to the enactment of the interstate commerce act, what is the fact as to the railroads having, generally, printed tariffs or rate sheets governing the matter of rates?—A. A great many tariffs were issued, but all freight was not handled on tariffs at that time. For economical reasons, if the shipment was a straight shipment, we would simply notify the auditor, and the agent would be interested in the billing, possibly by letter, prior to the establishment of the law.

Q. Was it common, prior to the enactment of the interstate commerce act, for shippers to get rebates or returns on freight paid?—A. Yes, sir.

Q. By payment to the shipper by the railroads of amounts returned?—A. Yes, sir; payment by voucher.

Q. Will you state generally what the situation was with
10856 respect to that, why it was and how it was that the railroads made the rates?—A. It was simply a question of competition, either by competing lines or possibly market competition, where we found that lower rates were being made by other lines or traffic from other points was coming into points where we had the traffic, and then we made concessions to the shippers. Very frequently the question came to us from the shippers, advising us that they could not obtain certain contracts, or they could not make shipments to certain points, or that other lines were offering them lower rates, and then we endeavored to secure the traffic by making concessions ourselves.

Q. Then, where a shipper himself was competing, say, for contracts of one kind or another with others, the railroad rate would be made to the shipper to enable him in his business to get his contract and carry it out at a rate that was required to enable him to do so; that would be done in cases?—A. Sometimes.

Q. That is an illustration. Have you any knowledge, or an opinion from your knowledge, as to the amount, the per cent, of property transported during those times as to which such concessions were made?—A. It was very large; I would say that it was at least 90 per cent of the tonnage.

Q. Mostly on large shipments, I suppose?—A. Principally; yes, sir.

Q. And how was the amount of the concession determined?—A. It varied very much. It was determined by the circumstances and conditions as they came to us.

10857 Q. As it was found necessary to get the business?—A. As a general proposition, yes, sir. We saved all we could of it, but we endeavored to get the business.

Q. Did this extend to through transportation over connecting lines, over different lines, and the sharing of the rebate or concession among the different roads that made up the through lines?—A. In some cases, yes.

Q. From the enactment of the interstate commerce act was there a change in the practices of railroads with regard to the observance of the tariffs?—A. To some extent.

Q. That extent has increased, hasn't it?—A. It has increased steadily.

Q. So that the subject of concessions has been practically entirely eliminated now?—A. It is entirely eliminated.

Q. From the passage of the interstate commerce act down to this time, so far as your road is concerned, do you know of any rebate, discrimination, or concession granted by your road to the Standard Oil Company in the matter of rates, by which the property of that company was transported at any less rate than any other shipper similarly situated and circumstanced?

Mr. KELLOGG. That is objected to as calling for a conclusion. This witness should be confined to stating what the rates were, and then the question as to whether they discriminated against their competitors is a question that can be discussed.

A. I do not.

Q. State the circumstances, whether there was anything in the way of a rebate or a less rate to the Standard than there
10858 was to other shippers over the same route.

Mr. KELLOGG. Same objection to that. Let him state what the rates were.

A. There was not.

Mr. MILLER. You have been some years getting at those. Don't you know them?

Mr. KELLOGG. You are right, we do.

Mr. MILLER. Yes, we let you know everything; we turned ourselves inside out.

Q. Did you ever have any sort of statement from any officer of the Standard Oil with respect to the matter of rebates to that company?—A. Yes, sir.

Q. From whom?—A. Mr. W. H. Tilford.

Q. When was that?—A. I think it was some time in 1889.

Q. 1889?—A. Yes, sir; about that time.

Q. Was it with respect to the matter of granting rebates or less rates than to anybody else?—A. It was a statement as to their accepting rebates.

Q. What did he say?—A. That they would not accept them.

Q. Have you been familiar with the establishment of the rates, had to do with them, on which the products of the Standard Oil Company over your railroad, within the division under your charge, have been conducted during these years since the establishment of the interstate commerce act?—A. Yes, sir.

Q. And you say that, to your knowledge, no rebate or preferential rate has been given to the Standard Oil Company on any of that transportation.

Mr. KELLOGG. That is objected to because what is a prefer-
10859 ential rate is question of law. Let him state what the rate is that the Standard Oil had, and then it will appear whether it was preferential.

A. There was not.

Q. In the making of rates has there been any intention or purpose on the part of your road to give the Standard any preferential rate over other shippers similarly circumstanced or situated?

Mr. KELLOGG. Same objection to that.

A. No, sir.

Q. Was the purpose of your company in marking its tariffs "Not to be posted" and not filing tariffs where the tariff covered transportation entirely within a State for the purpose of concealing a rates or covering a discriminatory rate?—A. It was not.

Q. I think you have stated that it applied to all State tariffs and on all commodities, and was a general practice?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Mr. Johnson, your road is under indictment for using that 9-cent a barrel rate from Olean to Rochester for intermediate shipments for the Standard Oil Company, isn't it?

Mr. MILLER. I object to that as incompetent, immaterial, and irrelevant.

A. I understand it is.

Q. You know it is, do you not?

Mr. MILLER. Same objection. Of course, it is understood
10860 that these objections——

Mr. KELLOGG. Yes; these objections may apply to all of this.

Q. You know it is, don't you?—A. Yes; I don't know all the details of that.

Q. Well, you know it is under indictment for using that rate?—A. Yes, sir.

Mr. MILLER. For not filing its tariffs, wasn't it?

Q. For shipping on that rate interstate business without filing it with the Interstate Commerce Commission?—A. Yes, sir.

Q. That is the charge, isn't it?—A. I don't know as to the exact charge.

Q. Well, you know it is under indictment?—A. Yes, sir.

Q. Has it yet been tried?—A. No, sir.

Q. The case is pending now, is it?—A. Yes, sir.

Q. Were you present at the trial of the Vacuum Oil Company for shipping on that 9-cent a barrel rate over your road when it was not filed with the Interstate Commerce Commission?—A. You say Vacuum Oil Company.

Q. Well, the Standard Oil Company of New York.—A. Yes, sir.

Q. You were present at that trial?—A. You refer to the trial during the past summer?

Q. Yes, sir.—A. Yes, sir; I was present.

Q. That was for shipping oil on that 9-cent rate, wasn't it?

Mr. MILLER. I object to this for the same reason. Whatever the charge was the indictment will best show. It is im-
10861 material and irrelevant.

Q. You were present at that trial, were you?—A. Yes, sir.

Q. And you were a witness for the Standard Oil Company?

Mr. MILLER. He was a witness for the Government.

A. I was a witness for the Government, subpœnaed by the Government.

Q. Well, all right, a witness for the Government. They were convicted, weren't they? The Standard Oil Company was convicted, wasn't it?—A. I think it was.

Q. Now let us see about that 9-cent rate. I show you the tariff which you referred to, showing the 9-cent a barrel rate from Olean to Rochester, and 11 cents a barrel from Olean to Buffalo, being

Government Exhibit 607, two sheets. That tariff was not printed, was it?—A. This is not a correct copy as far as that is concerned.

Q. It is not a correct copy?—A. No, sir. That was printed as far as the heading is concerned, and filled in by typewriter as far even as the routing in concerned.

Q. The heading simply was printed?—A. The heading.

Q. The rates were not printed in the tariff?—A. No, sir.

Q. But were filled in with the typewriter?—A. Yes, sir.

Q. You used the blank form, didn't you?—A. The regular blank form.

Q. And you marked it "Not to be posted?"—A. No, that was printed on the tariff and was not part of the blank.

Q. But it was marked "Not to be posted?"—A. It was, as a State rate.

10862 Q. Now, you say that tariff, a part of the time, was in the station at Olean?—A. No, I did not say that. I said that I knew at least for a part of the time that it was filed and posted there. I did not check periodically or perhaps frequently, but every time that I did check it was there in the station.

Q. Then, you say part of the time it was posted in the station. It was never posted on the wall of the station, was it?—A. No, sir, or any tariff posted on the wall.

Q. What?—A. Not any tariff posted on the wall.

Q. Was it at any time in the file of the agent at Olean?—A. It was.

Q. Now, there is no other refinery at Olean except the Standard Oil Company, is there?—A. Not at the present time, nor during ——

Q. So no other shipper would be going to the station in Olean except the Standard Oil, would there?—A. I think there might have been.

Q. Where from?—A. Any one that wanted information could have gone there.

Q. A man living over at Bradford would not go to Olean for information about a tariff, would he, Mr. Johnson?

Mr. MILLER. I object to that. Mr. Kellogg knows more about that than anybody else. What does he want to ask the witness for?

Q. Would he?—A. I think he would if he desired to.

Q. If he desired to ship from Bradford to Rochester——A. No, sir.

Q. ——he would go from Bradford over to Olean, 26 miles,

10863 to get that tariff, would he?—A. Not as far as the rate from Bradford is concerned, but if he desired to know the rate from Olean he would.

Q. In order for him to know the rate from Olean, you think he should get on the train and go from Bradford over to Olean and inquire of the station agent, do you?—A. I know they do do such things very frequently.

Q. You think that is a reasonable requirement, do you?—A. At that time, under the law, yes, sir.

Q. Did the agent at Bradford have that tariff?—A. No, sir.

Q. Did any of your agents except the Olean agent have that tariff?—A. They did.

Q. Who?—A. Rochester, Olean, and Buffalo, the three agents that were concerned.

Q. Those were the only three agents?—A. Yes, sir.

Q. Rochester, Olean, and Buffalo?—A. So far as the agents were concerned.

Q. Is there any independent refinery at Rochester?—A. No, sir.

Q. Is there any independent refinery at Buffalo?—A. No, sir.

Q. Is there any independent refinery at Olean?—A. No, sir.

Q. Then, that tariff was in the hands of agents only at Standard Oil points?—A. Yes, sir.

Q. Did any other agents of the Pennsylvania road have it?—A. No agent.

10864 Q. Who else had it?—A. The auditor and general freight office.

Q. The auditor and general freight office?—A. Yes, sir.

Q. Where is your general freight office?—A. Philadelphia.

Q. Anybody else have it?—A. My own office had a file of it.

Q. And your office. Nobody else had it?—A. I have no knowledge of anyone else.

Q. The Standard Oil had it, didn't they?—A. They did not.

Q. They did not have it? They shipped under it, didn't they?—A. They did.

Q. Now, what do you call blind-billing?—A. A waybill that does not contain all of the information that a collect waybill would. In this case as far as the rate and the revenue were concerned, they were omitted.

Q. That is, the waybill of the railroad did not show the rate?—A. The transportation waybill, the movement waybill, did not.

Q. Why didn't you have that?—A. Because if that had shown the revenue, the revenue then would have been charged against the agent, and the agent then would have been responsible for the collection. We desired to carry out the request of the Standard Oil Company, to make one collection through their New York office, and therefore I instructed all agents forwarding the shipments of the Standard Oil Company to omit the charges and report the shipments to the auditor, who would make the bill.

10865 Q. The fact that the waybill of the railroad did not show the rate would tend to keep it from the clerks in the office, as well as the point of origin and destination of the freight, would it not?—A. It would not.

Q. How would they know the amount if they did not see it in the waybill?—A. They have the rate in the tariff.

Q. The conductor would not see the rate, would he?—A. No.

Q. Ordinarily the conductor takes the waybill, doesn't he?—A. He does not.

Q. Doesn't he have any waybill at all?—A. He takes a running card, but ordinarily he does not take the revenue waybill.

Q. Now, the Standard Oil directed you to blind-bill that, didn't they?—A. That notation was on their shipping order.

Q. On the shipping order given by the Standard Oil Company, that is received by the railroad company, directing you where to route this, was marked the following: "Agent, Olean, New York, blind-bill to Rochester, New York?"—A. Yes, sir.

Q. "Agent, Rochester, New York, prepay through to Norwood and charge to Standard Oil Company, New York;" that was on there, too, wasn't it?—A. Yes, sir.

Mr. MILLER. What is it you are showing him?

Mr. KELLOGG. Shipping order given by the Standard Oil Company, or the Vacuum Oil Company, for a carload of oil, Petitioner's Exhibit 611–A.

Q. I show you Petitioner's Exhibit 611–A, which is the shipping order. You are familiar with that, are you?—
10866 A. Yes, sir.

Q. That directs you to ship one car to what point?—A. Burlington, Vermont.

Q. Is that the only direction you received from the Standard Oil Company?—A. For that shipment; yes, sir.

Q. Is that the only waybill or bill of lading which you issued?—A. I do not think this is a bill of lading.

Q. It is a receipt to the Standard Oil Company for a shipment, isn't it?—A. Yes. This is the bill of lading. I thought it was the shipping order, but it is the bill of lading.

Q. And that bill of lading directs that that car be shipped through to Burlington, Vermont, doesn't it?—A. Yes, sir.

Mr. MILLER. I object to that. It shows for itself.

Q. That is the only bill of lading you gave?—A. For that car.

Q. And the only shipping directions you received from the Standard Oil?—A. Possibly there may have been a duplicate of that. I don't know anything about that.

Q. Yes; it may have been made in duplicate.—A. Yes, sir.

Q. I am not including that, Mr. Johnson.—A. I see.

Q. Now, all of your shipments that went to Burlington or any other point in the State of Vermont, under that 9-cent rate, during several years prior to 1906, were blind-billed, were they not?—A. Yes, sir.

Q. And you issued a bill of lading like that one?—A. Yes, sir.

10867 Q. Now, you say that blind billing was used so that the freight would not be collected by the local agent at Olean?—A. Yes, sir.

Q. Couldn't they settle it through the auditor's office just exactly as well if the rate was put into the waybill and the bill of lading?—A. No, sir.

Q. Why not?—A. Because that would involve additional labor in extensions, additional corrections, additional work in arriving at the proper charges on the total shipments, and when this order was first

issued we were trying to save every cent that we could, and we did it for these reasons.

Q. That is, the additional labor would be writing the rate per hundred on the waybill; that is the additional labor, isn't it?—A. Bear in mind that I have already testified that the primary object was to collect the bill as one.

Q. But the additional labor you are talking about was simply writing the rate per hundred pounds in the waybill, wasn't it?—A. And extending.

Q. Yes; and extending it out?—A. Yes, sir.

Q. That is a customary way of doing, isn't it?—A. In a great many cases it is.

Q. Well, almost unanimously, isn't it?—A. At the present time; yes, sir.

Q. And has been for many years, hasn't it?—A. No. sir.

Q. It has not?—A. No, sir.

Q. Can you name any other case on the Pennsylvania road where you blind billed any freight?—A. I could not say on the

10868 Pennsylvania Railroad. There were other cases prior to 1900.

Q. For the Standard Oil Company?—A. No, sir; for others.

Q. Can you name one single case where you blind billed any freight for any other shipper except the Standard Oil?—A. There was coal that was blind billed at that time.

Q. Coal for what company?—A. I can not give you the companies at present, because I have not referred to the record. It was the practice.

Q. It was the practice? As to all coal shipments?—A. No, sir; not as to all coal shipments.

Q. That is the only case you can think of?—A. (No response.)

Q. Was that on your division of the Pennsylvania?—A. In some cases.

Q. Name a shipper who blind billed the coal.—A. We received coal from Daguscahonda, as I now recall it, in Elk County.

Q. Over what road?—A. It came in over the W. N. Y. & P. line.

Q. For what shipper?—A. The Erie Railroad.

Q. The shipper was the Erie; who was the consignee?—A. The Erie Railroad. It was their supply coal.

Q. Oh, their supply coal? That was for the use of the Erie Railroad—for its engines?—A. Yes, sir.

Q. It would not have taken the regular freight rates anyway, would it, and did not take the regular freight rate?—A. There was no other freight rate there.

Q. Well, you had a special rate for supply coal, didn't you?—A. We made a rate for the coal, but there was no——

10869 Q. You mean no standard rate?—A. There was no regular standard rate there. It was a rate made for that purpose.

Q. Now, have you named all the saving of labor that you can think of in not putting the rate into the waybill?—A. As far as the saving of labor, that is a minor question.

Q. You say the primary purpose was to collect it through the auditor's office?—A. Collect all the charges.

Q. Can you tell me what there was to prevent you from collecting through the auditor's office and also stating the rate in the waybill?—A. Because then the waybill would have been worked up item by item instead of the total shipments and one extension. It was preferable.

Q. Why would it have to be worked up item by item?—A. If it was shown on the waybill the auditor——

Q. If it showed on the waybill 9 cents a hundred pounds, all the auditor had to do was to figure up the number of hundred pounds, wasn't it?—A. He simply added the total shipments and multiplied by nine.

Q. In order to get the total shipments, he had to have the individual shipments, hadn't he?—A. Only as far as the number of barrels was concerned.

Q. Isn't it a fact that duplicates of these waybills and a duplicate of this bill of lading went to your auditor's office showing the weight and the amount shipped?—A. No, sir; not as far as the bill of lading is concerned. A tissue copy of the waybill did go.

Q. A tissue copy of the waybill went to the auditor's office?—A. Yes, sir.

10870 Q. And he had to figure up the number of cars and the total weight, hadn't he?—A. He had; not the total weight, but the total number of barrels.

Q. Now will you tell me how differently you would do it if that rate was stated in the waybill?—A. Every transaction, if it was stated in the waybill, would have been for each individual car, weight, rate, extension of the revenue.

Q. Why couldn't the auditor have done that just as well?—A. Because it was charged up against the agent and it had to correspond with the charge.

Q. Isn't it customary to give the agent a release for charges?—A. No, sir.

Q. You never heard of that?—A. Yes; I have heard of that.

Q. You never heard of giving the agent a release?—A. Yes; I have heard of it, but it is not customary.

Q. If the rate was stated in the waybill and the waybill went to the auditor's office, you would simply give the local agent a release, wouldn't you?—A. We would not.

Q. That is the way it would be done if the rate was stated in the waybill, isn't it?—A. Each individual acted for himself and pursued his own method. We pursued our method at that time.

Q. So you say the only object in blind-billing that was to collect it through the auditor's office and to save labor?—A. That was the primary object, those two questions.

Q. Was that the only object?—A. It was.

(A recess was here taken until 2 o'clock p. m., at which time the cross-examination was resumed.)

10871 Q. Mr. Johnson, you say that this oil was blind-billed from Olean to facilitate the collection of it through the auditor's office?—A. Yes, sir.

Q. Isn't it a fact that the New York Central in the same shipments took the oil at Rochester and carried it to Norwood under a tariff that was not filed with the Commission, but did not blind-bill it and collected it through the auditor's office?—A. I understand that is correct.

Q. Then the New York Central did not find any trouble in collecting through the auditor's office and showing the rate on the bill, did it?—A. We do not think their method was as good as ours.

Q. You don't think it was as good as yours?—A. No, sir.

Q. You say this rate was originally put in for a crude oil rate from Olean to Rochester?—A. Originally, yes, sir.

Q. How many years ago did you commence to use it for shipments to Vermont on refined oil?—A. To Vermont at no time for any specific point; it was simply for points beyond.

Q. What?—A. It was simply for points that were beyond Rochester. We began to use it along in the seventies, 1875, I should think. No, not as early as that. It was 1883, because the Rochester branch was not completed until 1883. Then it was a year or so after that that we began to use it.

Q. When did you commence to use it for shipments of interstate business to any point in Vermont?—A. Oh, it must have been as early as 1885.

Q. When did you cease using it for interstate shipments?—A. About August 28 (I think that was the date), 1906.

10872 Q. Wasn't it in 1905 that you ceased using it?—A. I don't think so. It may have been. I have not referred to the record and would not want to give the specific date. My impression is it was at the time that the law required the filing of the rate when it might be used——

Q. Wait a moment. Do you remember when the Bureau of Corporations investigated the Pennsylvania's office in relation to this 9-cent barrel rate?—A. I remember the time they visited the office. I happened to be in the Philadelphia office at that time, and therefore know.

Q. That was in the summer of 1905, wasn't it?—A. I don't want to say. I couldn't tell you without looking up some records.

Q. What is your best recollection of it?—A. It was either in 1905 or 1906.

Q. If it was in 1905, wasn't it immediately after that that you stopped using that rate for interstate shipments?—A. No, sir, I don't think it was.

Q. You filed the tariff with the Interstate Commerce Commission, didn't you?—A. I don't think we did at that time. I can give you a

definite answer as far as that is concerned, if you desire, but I am only speaking from recollection now.

Q. Didn't you immediately after that investigation amend the tariff so it could only be used for partly finished products in shipments from Olean to Rochester?—A. I don't think so.

Q. Will you look and see?—A. The records will show just when we changed it.

Q. Will you look and see when you amended that tariff so as to make it apply to partly finished products?—A. Yes, sir.

10873 Q. It only applies now to partly finished products, doesn't it?—A. That is the present tariff.

Q. In other words, at present you only use that for shipments from Olean to Rochester?—A. We do not allow it to be used on any interstate shipments.

Q. Now, shortly after or about the time of the investigation by the Bureau of Corporations, wasn't it a fact that refined oil was carried from Olean to Rochester and then pumped from one car into another car and sent on its journey to Vermont?—A. Never, to my knowledge.

Q. Do you mean it never was done?—A. No, sir; I mean that I have no knowledge of any such transaction.

Q. Didn't you learn that that was the case when you——A. I did not.

Q. You never learned that?—A. I did not.

Q. Don't you know that one of the Vacuum Oil Company men testified that was the fact, before the grand jury?—A. I have no recollection of any such statement.

Q. Isn't it a fact that oil was shipped under that tariff, shortly after this investigation, to Rochester, and pumped into a tank and then from a tank into another car?—A. Not to my knowledge.

Q. You don't know that that is not true, but you know you never heard of it?—A. I have no knowledge in regard to any such transaction, either for or against.

Q. Well, whatever the date was, shortly after the investigation of the Bureau of Corporations, you ceased to use that tariff as

10874 a part of a through shipment, didn't you?—A. I think it was some time after that, but I would not say, shortly after that.

Q. Will you find out when you ceased to use it, when you changed your tariff?—A. I will; as soon as I return home I will ascertain.

Q. The Pennsylvania have an office right here in New York, haven't they?—A. Oh, they know nothing about it; I would have to go to my own records.

Q. Can't you ascertain anything from Philadelphia while you are in town?—A. No, sir; that would not be practical.

Mr. KELLOGG. If this gentleman sends the tariff, will that be sufficient, Mr. Miller, without recalling him?

Mr. MILLER. I think so. I think we may agree to send some statement. I think we can agree on that, and if we can not agree as to the time, why, he will have to come back.

Mr. KELLOGG. All right; that will be entirely satisfactory.

Q. This rate from Olean to Rochester of 9 cents a barrel amounted to 2.8 cents a hundred, didn't it?—A. It did.

Q. And the New York Central's rate from Rochester to Norwood was 9 cents a hundred, wasn't it?—A. So I understand it.

Q. That would make it 11.8 cents a hundred pounds from Rochester to Norwood?—A. Yes, sir.

Mr. MARTYN: From Olean.

Q. I mean from Olean to Norwood.—A. From Olean to Norwood, yes, sir.

10875 Q. Now, during the same time that oil was being carried on those two rates, you had a tariff in, which was filed with the Interstate Commerce Commission, from Olean to Norwood, of 26½ cents a hundred, hadn't you?—A. Via Buffalo?

Q. Yes.—A. And Suspension Bridge?

Q. Yes.—A. There was such a tariff published, yes, sir.

Q. And the tariff on its face—I mean the tariff on its face disconnected from the division sheet, did not show whether it was to go through Buffalo or where it was to go, did it?—A. Not disconnected from that, but that makes a direct reference to the division sheet.

Q. Yes, but it named a rate of 26½ cents a hundred. The division sheet was not filed with the Interstate Commerce Commission, was it?—A. No, sir.

Q. And it was marked "Not to be posted," wasn't it?—A. No, sir.

Q. It wasn't?—A. I don't think the division sheet was.

Q. Well, let us see. I show you the division sheet between the Pennsylvania and the New York Central road, the Rome, Watertown & Ogdensburg division, dated August 30, 1904, marked "Not to be posted."—A. Yes, sir, that one was so marked. That is not the first one, however.

Q. That division sheet was marked "Not to be posted," wasn't it?—A. Yes, sir, it was.

Q. So that on the face of the tariff it named a 26½-cent rate and simply referred for the routing to a percentage sheet which was marked "Not to be posted," didn't it?—A. So far as the routing was concerned, that was the general practice at the time.

10876 Q. But the tariff on its face named a 26½-cent rate. Now, there are two routes from Rochester to Norwood, are there not?—A. I don't know of any.

Q. You don't know of any?—A. Yes, there would be, one via Charlotte and one via Syracuse, as far as that is concerned.

Q. Let me see if I can find another route. There was one route from Olean to Rochester?—A. You said Rochester.

Q. Oh, from Olean. I am mistaken, then. From Olean to Norwood there were two routes?—A. Yes, sir.

Q. One through Rochester——A. Yes, sir.

Q. Direct, by the Pennsylvania line and the New York Central line?—A. Yes, sir.

Q. The other through Buffalo by the Pennsylvania line and the New York Central line?—A. Yes, sir.

Q. And the route through Buffalo might go by Rochester or not by Rochester? There were two routes by the New York Central from Buffalo to Norwood, weren't there?—A. From Buffalo to Norwood?

Q. Yes.—A. Yes, sir.

Q. The main line of the New York Central road runs from Buffalo to Rochester, and then the Rome, Watertown & Ogdensburg division to Norwood?—A. As far as the routes are concerned, yes, sir.

Q. Now, you also had a rate of 11 cents a barrel, that was not filed with the Commission, from Olean to Rochester, hadn't you?—A. No, sir.

Q. To Buffalo, I mean.—A. Yes, sir.

Q. So that you had one rate of 9 cents per barrel from Olean
10877 to Rochester and one rate of 11 cents per barrel from Olean to Buffalo, neither one of which was filed with the Commission?—A. That is right.

Q. The New York Central had a rate of 9 cents a hundred from Rochester to Norwood and of 12 cents a hundred from Buffalo to Norwood, neither one of which was filed with the Commission?—A. I don't know anything about the Buffalo rate.

Q. Let me show you the Buffalo rate. I show you a tariff, marked "Petitioner's Exhibit 928," petroleum and its products, from Buffalo and East Buffalo to Norwood, of 12 cents per 100 pounds.—A. Yes, sir; I see that so reads.

Q. That would make the sum of your rates from Olean via Rochester to Norwood 11.8 cents per hundred pounds, and from Olean, through Buffalo, to Norwood about 15 cents per 100 pounds, wouldn't it?—A. So far as the sum of the two figures is concerned. We had no knowledge of the rate and never used it.

Q. You know nothing about the New York Central's rate?—A. No, sir; nor did we deliver any shipments that were sent to Buffalo to the New York Central.

Q. You did not?—A. No, sir.

Q. You did not ship any oil under that 26½-cent tariff at all, did you?—A. I think we did to points on that—the 26½ covered not only Norwood but other points.

Q. Why was it put in?—A. Simply because it was intermediate between other stations to which shipments were being made—Watertown, Ogdensburg, and Clayton and those points.

Q. Did you tell Mr. Felton that?—A. No, sir.

Q. You never told him that?—A. No, sir.

10878 Q. Did you ever have any conversation with Mr. Felton about that?—A. I did not.

Q. You never had any conversation with Mr. Felton about that subject at all?—A. I never had any.

Q. Now, let me read you Mr. Felton's testimony on that subject. "Witness: Johnson told me that that tariff was issued to take care

of the R., W. & O. stations on purely local business."—A. Well, that was recently.

Q. No; he is referring to the 26½-cent tariff I am talking about.—A. Very well; at those trials in conversation I did say so, but that had no bearing on the rate—the making of it—or anything else. Mr. Felton was not connected with the Standard Oil Company when that rate was made. The only conversation I had in regard to that was with Mr. Samuel Goodman.

Q. You never told Mr. Felton that that tariff was issued to take care of the R., W. & O. stations on purely local business?—A. I may have told him that subsequent to these trials in which the question was discussed.

Q. I thought you said you never talked with him about it.—A. I understood your question as bearing upon the issuing and making of the rate. I say never in that respect.

Q. For what reason was that 26½-cent tariff put in?—A. It was put in for us to obtain shipments consigned to Watertown, to Clayton, to Ogdensburg, and these local points in the northwestern part of the State.

Q. See if I name them correctly. This 26½-cent rate was to Cape Vincent, Morristown, Norwood, Ogdensburg, Clayton,
10879 Watertown, and Carthage, was it not?—A. Yes, sir.

Q. Was it not?—A. As I recall the tariff, yes, sir.

Q. Now, look and see if I am correct about that [handing witness paper].—A. Cape Vincent, Morristown, Norwood, Ogdensburg, Clayton, Watertown, and Carthage.

Q. Are all of those stations on the Rome, Watertown & Ogdensburg division east of Oswego?—A. Yes, sir. Northeast.

Q. It would be commonly called east, wouldn't it?—A. Yes, sir.

Q. Now, I show you the New York Central's tariff, petitioner's Exhibit 612, which makes a rate of 12½ cents from Rochester to all of those stations, and ask you if that is not correct?—A. I don't know.

Q. Well, look and see if that tariff does not make it.—A. So far as the reading of it is concerned?

Q. Yes.—A. "Agent, Rochester. All stations on the R., W. & O. division, Oswego and east, 12½ cents."

Q. So that all the stations you named in your tariff of 26½ cents were covered by that 12½-cents rate on the New York Central road?—A. Apparently so, but we never knew anything about it.

Q. You never knew anything about it?—A. No.

Q. The New York Central did, didn't they?—A. I assume they did. The party that issued that tariff certainly ought to know about it.

Q. The New York Central was a party to that 26½-cent tariff, weren't they?—A. They were.

Q. Will you tell me why they were making a 26½-cent rate
10880 from Olean to these towns, when by combination with your

local rate they had a rate of 15½ cents to the same places?—A. I do not know any of the reasons that influenced them.

Q. Did you ever ship one carload of oil from Olean on that 26½-cent rate to those towns?—A. I think we did.

Q. Will you find out if you did?—A. That would be utterly impossible, going back to the time that rate was first put in force.

Q. Let us see whether it is impossible or not. That 26½-cent tariff was in force down to what time?—A. It was in force, I think, in 1905; that is my recollection.

Q. Now, all of your shipments made for the Standard Oil Company will show in the auditor's office what rates they paid, won't they?—A. No, sir; not at the present time.

Q. Why? Have you destroyed the records?—A. The records are ten or fifteen years ago.

Q. I am not talking of ten or fifteen years ago.—A. You didn't qualify it as to the time.

Q. I will qualify it to 1905. Did you ship a carload on that tariff in 1905?—A. I do not think we did.

Q. Did you in 1904?—A. I do not know at the present time.

Q. Can you find out?—A. I think I can.

Q. Did you in 1903?—A. I do not know at the present time.

Q. Will you find out?—A. Yes, sir.

Q. Did you in 1902?—A. I do not know.

Q. Will you find out?—A. If the records are where I can get at them, yes, sir.

Q. Find out as far back as the records are in existence
10881 whether you shipped any oil to those stations you name on that 26½-cent rate from Olean, will you?—A. I can not go back of P. R. R. records. The W. N. Y. & P. records have passed out of existence and are not where I can get them.

Q. Now, I notice that this blind billing of cars from Olean to Rochester shows the destination of a large number of cars going to all these places named in that 26½-cent rate.

Mr. MILLER. I object to that. You name the one that you show him.

Mr. KELLOGG. The same kind of blind billing.

Mr. MILLER. There is some doubt about that.

Mr. KELLOGG. It appears in this record.

WITNESS. If they moved via Rochester, certainly they do.

Q. And they did not go on the 26½-cent rate?—A. If they were not routed via Buffalo and were routed via Rochester they would use the 9-cent rate.

Q. Then you can't tell me whether any carloads were ever shipped from Olean to those stations that you name, which you say that tariff was put in for, under that 26½-cent rate?—A. I said simply at the moment I could not.

Q. Now you say you knew that this oil that was going to Rochester would not go on this 26½-cent tariff?—A. It would not.

Q. What tariff did you expect it was going on?—A. I had no expectation at all about it.

Q. You had not?—A. I did not know at that time that there were any shipments that were being ordered to those points.

Q. Is it not a fact that you would get a greater rate under your proportion of this 26½-cent tariff than you would get under your 9-cent tariff?—A. Consigned to points beyond Norwood?

10882

Q. Yes, sir.—A. I would not allow it.

Q. You got 20 per cent under this 26½-cent rate, didn't you?—A. Certainly not. That was prohibitory for any point beyond Norwood.

Q. I am talking about those stations in New York.—A. We would not use that as a proportionate rate to Norwood on shipments consigned to beyond.

Q. I am not talking about shipments consigned beyond Norwood; I am talking about shipments to these local stations in New York. Wouldn't your proportion of this 26½-cent rate be greater than your 9-cent a barrel rate?—A. I think it would.

Q. Yes, sir. It would be double, wouldn't it?—A. I don't know about that.

Q. More than double?—A. No; I don't know without stopping to figure it out.

Q. It was 20 per cent, wasn't it?—A. Of that?

Q. Yes.—A. In some cases I think it was.

Q. It was 20 per cent to those stations named in New York, was it not?—A. Not all the time; no, sir.

Q. What was it?—A. In some cases it was 13 per cent. That which you have in your hand now is the division sheet that the yellow sheet superseded.

Q. This is the earlier division sheet?—A. And the occasion of their change at that time was we demanded of the New York Central a minimum of 20 per cent with R. W. & O. percentages.

10883

Q. Since 1904, then, you got 20 per cent of that rate?—A. Yes, sir; as a minimum.

Q. To those stations. And that would be double, wouldn't it, what you did actually get by the way of Rochester on the 9-cent tariff?—A. Yes.

Q. It would be 5.3 against 2.8 cents?—A. Yes, sir.

Q. More than double?—A. Yes.

Q. And the distance was only 70 miles to Buffalo and 106 miles from Olean to Rochester?—A. Yes, sir.

Q. Now, that rate from Olean to Rochester, you said, at one time was 7 cents a car?—A. No.

Q. I mean 7 cents a barrel; did you?—A. Yes, sir.

Q. That is 4.4 mills per ton per mile, isn't it?—A. That did not include mileage on the cars.

Q. What do you mean by mileage?—A. On all foreign cars we pay a mileage, on tank cars ¾ of a cent per mile, and when the 7-cent rate was made we did not pay mileage.

Q. Well, take the 9-cent; you paid mileage on that, didn't you?—A. Yes, sir; and that was the occasion for the change.

Q. That is, you got 9 cents a barrel, and out of that you paid ¾ of a cent per mile for the car?—A. We did.

Q. That would leave you how much per ton per mile?—A. I could not say without stopping to figure it out.

Q. Well, it is very easy to figure it. Taking an ordinary-sized car it would be about 4½ mills, wouldn't it?—A. No, I think it would be nearer 5 mills per ton per mile.

10884 Q. What is the average rate per ton per mile?—A. 2.8 would be 56 cents a ton. A little over 5 mills.

Q. It is ¾ of a cent each way?—A. Yes, sir.

Q. That is 1½ cent a mile?—A. Yes, sir.

Q. That is just what I said, 4.5 mills per ton per mile.

Mr. MILLER. Are you taking the stand on that, Mr. Kellogg?

Mr. KELLOGG. No.

Mr. MILLER. I would like to cross-examine you if you are.

Q. It is 106 miles, isn't it?—A. Yes, sir.

Q. A cent and a half would be $1.59, wouldn't it, if you paid mileage on the car?—A. Yes, sir.

Q. Now, a 40,000-pound car——A. Oh, there are no 40,000-pound cars.

Q. What are they?—A. 120.000 and 150,000.

Q. We have a list of the shipments. You say the Standard Oil cars run 120,000 pounds?—A. In some cases, yes, sir.

Q. I have a complete list of their shipments into Vermont.—A. Oh, they run anywhere from 80,000 up to 120,000, not 40,000 pounds. Don't you mean 40 tons?

Q. No, I mean 40,000 pounds.—A. I don't know of any such tank car.

Mr. MILLER. I think it was Mr. Durand's idea when he made his schedule that the average was 60.000; wasn't it?

Q. It would be less than 5 mills a ton a mile at 60.000 pounds?—A. I wouldn't want to swear to that unless I figured it out.

Q. 5 mills a ton a mile is a good deal less than your own average rate per ton per mile on the Pennsylvania system, isn't it?—A. Not a good deal less, no, sir.

10885 Q. Well, it is considerably less, isn't it?—A. It is a little less, yes.

Q. Will you tell me, if you never used this 26½-cent tariff for the shipment of oil to those stations, why you put it in and had it published?—A. We put it in in the first place in the hope of securing some of the shipments.

Q. In the hope of securing shipments when you knew you had secret rates very much less?—A. No, sir; I never knew it.

Q. You never knew it?—A. No, sir.

Q. You didn't know the 9-cent a barrel rate and the 11-cent a barrel rate——A. Mr. Kellogg, that rate was put in in an honest attempt to secure part of the traffic based on that rate, and with no other object.

Q. Why didn't you put in a rate with equal honest intent to the independents at Bradford and Oil City and the other places?—A. We were not taking oil out of Bradford. As far as Oil City was concerned, it had a 26½-cent rate as against——

Q. Let me compare the rates. Why did you think all these shipments went by the way of Rochester to these stations that you name, if they were not going at a less rate than the 26½ cents a hundred?—A. I didn't have any thought about their all moving via Rochester.

Q. Weren't you curious to find out why you were not getting any shipments under the 26½-cent rate?—A. I was not. I thought we were getting some.

Q. You thought you were? Have you any recollection of any of your officials notifying you that you were not getting any
10886 shipments under that 26½-cent rate?—A. I saw shipments at these different points and I assumed that they moved on that rate.

Q. You simply assumed that? Did you ask the Standard Oil Company if they were shipping under the 26½-cent rate?—A. Certainly I did not.

Q. Didn't you know they were not?—A. I did not at that time.

Q. Now, the record in this case shows that 57 cars were shipped from Olean to Rochester destined to Watertown during the year 1904, under this 9-cent rate. Didn't you notice that large shipment?—A. No, sir; I did not until subsequently.

Q. Never noticed it until subsequently?—A. No, sir.

Q. Now, when you did notice it, did you find out at what rate the stuff had been going for years?—A. I can't acknowledge it had been going for years at any such rate.

Q. You can not?—A. No, sir; not via that junction.

Q. And yet you can't show me that one carload ever went under that 26½-cent rate?—A. I think I can.

Mr. MARTYN. I object to that. He has stated it five times already.

Q. Well, what is your business connection with the Pennsylvania Railroad—to keep track of the traffic?—A. In a general way, yes, sir; but not to come down to details and inquire as to every car that is moving or via what route.

Q. Here were hundreds of cars moving via Rochester.—A. Very true.

Q. And no evidence that one went via Buffalo.—A. I could not acknowledge that.

Q. I know you can't acknowledge it, but you can't show
10887 anything to the contrary, can you?—A. If you will consider all the time in which those rates were in force, I will say yes. If I had the record I could show a plenty of them.

Q. I am talking about since 1900, 1901, and 1902.—A. I can show within that time, but that does not cover the entire transaction.

Q. You could not show any shipments within that time?—A. Possibly not.

Q. Now, you reissued that tariff on April 10, 1904, didn't you?—A. That was a routine matter of the office, and when any occasion for reissuing the tariff arose, the clerk who had charge of it would very naturally continue it and would not raise any question.

Q. Did the clerk reissue that tariff without your authority?—A. He reissued it without taking it up with me specifically; yes, sir.

Q. Did you know it was reissued in 1904?—A. I knew it in a general way.

Q. If you knew it was reissued in a general way, what, in a general way, did you reissue it for, if you had no shipments in 1904?—A. Because it covered many other points. The Rome, Watertown & Ogdensburg points were not the only points. If the clerk in question had called my attention to it——

Q. You have just testified it was reissued to cover those Rome, Watertown & Ogdensburg points.—A. Originally.

Q. Was it reissued to cover those points?—A. It has been reissued half a dozen times to cover those points.

Mr. KELLOGG. That is what I thought.

10888 Q. Now, I notice that during the time this 9 cents a barrel rate was being used, which amounted to 2.8 cents per 100 pounds from Olean to Rochester, a distance of 106 miles, the rate from Bradford, Pennsylvania, to Rochester, only 127 miles, was 9 cents per 100 pounds, or nearly four times as great.—A. That was the Oil City basis. Bradford took the Oil City basis at that time.

Q. So that the independent shipper at Bradford would have to pay 9 cents a hundred as against the Standard Oil 2.8 cents a hundred, wouldn't he?—A. Possibly.

Q. And the same at Oil City?—A. Yes, sir.

Q. And the same at Struthers, Pennsylvania?—A. It would be the same at Struthers.

Q. At Oil City and Struthers the rate was 12 cents a hundred, wasn't it, to Rochester?—A. I could not say at the moment what that was. My recollection of it, however, is that it was 45 cents a barrel.

Q. 12 cents a hundred it appears here, the Pennsylvania tariff given for it?—A. I think it was 45 cents a barrel.

Q. Well, 45 cents a barrel would figure over 11 cents a hundred, wouldn't it?—A. Yes.

Q. And against that Olean was paying 2.8 cents per 100 pounds?—A. Yes.

Q. Now, when you said that the Pennsylvania Railroad did not discriminate against the independents, you call that not a discrimination, do you?—A. I do.

Q. You don't think it is a discrimination to charge an 10889 independent from Bradford to Rochester, 127 miles, as

against 2.8 cents a hundred from Olean, a distance of 106 miles?—A. The comparison is not a fair one.

Q. It is not?—A. Entirely different circumstances and conditions. One is for local delivery and the other was not for local delivery.

Q. The Olean rate to Rochester for the Standard Oil was used for through shipments, wasn't it?—A. It was for through shipments; yes, sir.

Q. And it was used for local shipments to New York stations, wasn't it?—A. No, sir; not to local stations.

Q. Didn't you ship to Norwood, Watertown, and all those places?—A. That would not be local.

Q. That was not local?—A. No, sir; that was through.

Q. It was also used for local shipments from Olean to Rochester?—A. If you want to make a fair comparison, compare with the proportions of the rates, not with the local rates.

Q. There were a great many cars went to Rochester for local consumption at Rochester, weren't there?—A. For treatment in the refinery. I do not know of one car that went there for local distribution; not one.

Q. Where did all the oil come from that the Standard Oil Company sold locally in Rochester?—A. I do not know.

Mr. MARTYN. I object to that. There is no evidence in the record that they sold any.

Q. You don't know?—A. No, sir.

Q. Well, it appears in evidence here that a great many
10890 cars of refined oil went from Olean to Rochester locally. What became of them?—A. They were delivered by us to the Vacuum Oil Works, if there was any refined oil there. They certainly did not use us for local distribution.

Mr. MILLER. That was a shipment between refineries?

WITNESS. It was.

Q. Now, do you say that you did not ship hundreds of cars of refined oil from Olean to Rochester, which did not go beyond Rochester?—A. Not one car, as far as I have any knowledge whatever.

Q. Not one car?—A. We delivered the oil to the Vacuum Oil Works, exactly as it was billed.

Q. Certainly you did.—A. What they did with it afterward we have no means of knowing.

Q. You delivered refined oil and naphtha to the Vacuum Oil Company, shipped from Olean to Rochester, didn't you?—A. We delivered—if they made any such shipments, consigned to the Vacuum Oil Company, we delivered them to the Vacuum Oil Works.

Q. They did make lots of such shipments, didn't they?—A. I do not know.

Q. You don't know that they did not?—A. That they made shipments of finished products at that time?

Q. Yes, sir.—A. I do not know.

Q. Your tariff did not limit it, did it?—A. It did not.

Q. You could ship anything?—A. To the Vacuum Oil Works; yes, sir.

10891 Q. And your records will show whether you shipped any refined oil, won't they?—A. I don't think they do in all cases. It may have been simply oil, and then we would not know.

Q. I notice some of these waybills show naphtha, others refined oil, some gas oil; so your records, your waybills, do show, don't they, whether they are refined oil?—A. I have not examined them, therefore I do not know.

Q. You don't know. I understand that you say that the Grand Trunk tariff, defendants' Exhibit 124A, and the National Despatch Billing Book, defendants' Exhibit 124B, make a rate of 27 cents a hundred pounds, or the Boston rate, to Burlington, Vermont, via the Grand Trunk road and the Vermont Central road.—A. I did not say via that route. I would not want to say by what route until I looked at this.

Q. Well, via what route did they make it?—A. It does not give the route beyond Central Vermont delivery, the terminal road.

Q. The Central Vermont is the terminal road, isn't it?—A. Yes, sir.

Q. The other road is the Grand Trunk, isn't it? Look at your tariff.—A. That is via the Grand Trunk.

Q. And the Central Vermont?—A. I would assume that that is correct.

Q. Yes, that is what I asked you. That is what I understood. Now, does the same tariff make a rate of 27 cents a hundred to Portland, Maine?—A. It does.

Q. To Rockland, Maine? Let me see; Portland is on the Boston & Maine or the Maine Central?—A. Boston & Maine, that

10892 is the terminal of the road.

Q. Now, Rockland, Maine?—A. Yes, sir, that is Maine Central.

Q. On the Maine Central. In other words, that tariff, if it makes a rate to Burlington, Vermont, to Rockland and Portland, Maine, also makes rates to a large number of other Maine Central and Boston & Maine points, does it not?—A. I would say that it did.

Q. Now, that is the Boston rate, isn't it, 27 cents?—A. I think it is; yes, sir.

Q. Did the Pennsylvania Railroad Company make the Boston rate to those towns?—A. No, sir; we have no through tariff to very many of those towns.

Q. The Pennsylvania Railroad Company reaches Cleveland, does it not?—A. No, sir.

Q. Does not the Pennsylvania Railroad reach Cleveland?—A. No, sir; the Pennsylvania Company reaches Cleveland.

Q. Well, that is, the Pennsylvania system reaches Cleveland, doesn't it?—A. The lines west of Pittsburg; yes, sir.

Q. They are controlled by the Pennsylvania Railroad?—A. I think so.

Q. That company reaches Cleveland and Toledo, doesn't it?—A. Yes, sir.

Q. It reaches Oil City?—A. No, sir.

Q. Does not your line reach Oil City?—A. The Pennsylvania Railroad is at Oil City, eastbound.

Q. Yes, the Pennsylvania Railroad reaches Oil City, and the Pennsylvania Railroad reaches Pittsburg and Struthers?—A. Yes, sir.

10893 Q. And Buffalo?—A. Yes, sir.

Q. And all the other independent oil-producing points in western Pennsylvania, doesn't it?—A. No; not all of them.

Q. What ones are excepted?—A. We reach Struthers, Titusville, Oil City——

Q. Pittsburg?—A. Yes; Pittsburg, Emlenton, and now Bradford; did not formerly, however.

Q. Your line—the Pennsylvania system's line—is a direct line in connection with other lines to New England points, isn't it?—A. Yes, sir.

Q. Just as direct as the Grand Trunk?—A. Only in connection with other roads that we might use.

Q. The Grand Trunk has to connect with other roads too, hasn't it, to get to Boston?—A. To some of the points; yes, sir.

Q. The Grand Trunk would connect with the same lines you would connect with—that is, the Boston & Maine and the Maine Central, to reach Maine—those points?—A. So far as the terminal road is concerned; yes, sir.

Q. Now, did your line make the Boston rates to those points on oil?—A. We did not.

Q. You did not. You charged an arbitrary over Boston, did you not?—A. No, sir.

Q. What did you charge?—A. We had no through rates.

Q. You refused to pro rate with the New England roads, didn't you?—A. On the divisions that we could get we would not join, and will not to-day.

10894 Q. I mean the New England roads refused to pro rate with your road on shipments of oil to New England points, didn't they?—A. Now what do you mean to cover by that? Do you mean recently—within the past seven years?

Q. Until recently; well, say, prior to 1906 for ten years?—A. Oh, prior to that, under the old W. N. Y. & P. many of the New England roads did refuse to pro rate with us, and again in other cases we have refused to pro rate with them because the divisions were too low.

Q. Now see if I state it correctly. Prior to 1906, when pro rating was resumed on oil, is it not a fact that your line and the New England lines did not pro rate and make through rates on oil to any territory except the Boston & Albany road and the Fitchburg division of the Boston & Maine road?—A. No, sir; that is not correct.

Q. In what is it not correct?—A. No, sir; we covered other divisions of the Boston & Maine road and then the Fitchburg for some of the divisions.

Q. Well, a part of the old Fitchburg division?—A. No; I think a part of the Boston & Maine proper.

Q. A very small part?—A. We would not go up into the northern part because the revenue would not pay us.

Q. Well, the New Haven road did not pro rate with you, did they?—A. Oh, no; they did not.

Q. You did on other commodities go into the northern territory and give them Boston rates, didn't you?—A. In some cases we did and in others we did not.

10895 Q. You did in nearly every instance, didn't you?—A. No, sir.

Q. Generally speaking, you made prorating arrangements on other products?—A. Generally speaking, we made the prorating arrangements as far as we could, and we did not bar out oil either.

Q. Take Portland, Maine. You did not prorate to Portland, did you?—A. I would not say, without going over the tariffs. My impression is that we did.

Q. That you prorated on oil to Portland?—A. That is my impression.

Q. Will you produce the tariff that shows any prorating arrangement prior to 1906 with Portland, Maine?—A. I certainly will——

Q. All right, sir.—A. ——if we had any such tariffs.

Q. You don't know that you had such a tariff, do you?—A. I am not testifying positively now. I say to the best of my recollection at the present moment we did. I will advise you whether we did or not.

Q. Did you prorate to Rockland, Maine?—A. I don't think we did. I don't think we do to-day.

Q. Now, let us understand you. Do you mean that you do not prorate on anything into that Maine territory?—A. At many of the points we do not.

Q. And many of the points you do?—A. Yes, sir.

Q. And have for years, on everything except oil, or most everything?—A. No; not for years.

Q. Now, we will get at them. You say prior to 1906 you

10896 did not prorate with the New Haven road——A. That is correct.

Q. ——on oil?—A. Yes, sir.

Q. Since 1906 you have prorated with the New Haven road on oil?—A. Yes, sir.

Q. Now, we have got that straight.—A. That is, we make——

Q. Now, prior to 1906 did you prorate on other products coming from the West, with the New Haven road?—A. Let me be clear as to what you mean by pro rate. Do you mean a division of the rate, based on actual mileage, because that would not be strictly——

Q. No; a division of the through rate?—A. On agreed percentages, whatever they may be.

Q. Yes, sir?—A. Now, I have got it.

Q. So that, prior to 1906, you did prorate on other products than oil with the New Haven road?—A. Yes, sir.

Q. But you did not prorate on oil with the New Haven road?—A. Not to all points.

Q. Well, name us any points on the New Haven road that you did prorate to.—A. My recollection is we had certain rates, moving via Poughkeepsie, to certain territory there.

Q. Well, a small territory, wasn't it?—A. Comparitively so; yes, sir.

Q. Generally speaking, you did not?—A. They would not handle the traffic via Harlem River.

Q. The New Haven road refused to prorate with you?—A. Yes, sir.

Mr. MARTYN. Via Harlem River?

WITNESS. Via Harlem River; yes, sir.

10897 Q. They did not pro rate generally into New England territory, did they, on oil?—A. No, sir.

Q. Prior to 1906, generally speaking, the Boston & Maine, the Maine Central and the Vermont Central did not pro rate with the Pennsylvania road on oil, did they?—A. As a general proposition they did not.

Q. Generally speaking, since 1906 they have pro rated with the Pennsylvania road on oil, haven't they?—A. No, sir.

Q. They have not?—A. No, sir; they are not pro rating to-day on some of the territory.

Q. Yes; but on most of the territory they are pro rating to-day, aren't they?—A. I don't think they are.

Q. Do you know they are not?—A. I can give it to you—I can give you a definite answer later on.

Q. All right, give me that later on.—A. I will have to have a memorandum of these things.

Q. But the principal towns, the principal Maine towns on the Maine Central road and the Boston & Maine road since 1906 have made pro rating arrangements with your line, haven't they?—A. No; I don't think they have.

Q. You don't think they have?—A. That is my present impression.

Q. So you think pro rating is not in existence to-day with the Boston & Maine and Maine Central roads?—A. In some cases, yes; in other cases, no.

Q. Certainly in most cases in existence now?—A. Perhaps I can answer you better by saying this: To the southern part

10898 of those roads we have rates and divisions; to the northern parts, where the rates and divisions would be unremunerative, we do not.

Q. Do you know Mr. Donovan, the freight traffic manager of the Boston & Maine railroad?—A. Yes, sir.

Q. [Handing paper to witness.] Is that Mr. Donovan's signature?—A. Well, I could not tell definitely whether it is or some of the clerks in his office, because many of our letters would be signed by a clerk.

Q. That does not appear to be signed by a clerk, does it?—A. No; I was looking for an "E" there. I think that is his signature.

Q. You think that is his signature?

Mr. MILLER. What is this you are showing the witness now?

Mr. KELLOGG. I am showing him a letter from Mr. Donovan, the general freight traffic manager of the Boston & Maine Railroad.

Mr. MILLER. Is it an exhibit in the case?

Mr. KELLOGG. No.

Mr. MILLER. That is, you are using this witness to prove the document, are you?

Mr. KELLOGG. I am using this witness to prove the document.

Mr. MILLER. As a portion of your case, I suppose?

Mr. KELLOGG. No; cross-examination.

Mr. MILLER. I object to it as not proper cross-examination.

Q. You have had correspondence with Mr. Donovan, have you? You know him personally, do you?—A. Very slightly.

(The paper referred to is marked petitioner's Exhibit 934.)

10899 Mr. MILLER. Do you propose to offer this?

Mr. KELLOGG. I am going to; yes.

Q. I show you a letter dated August 22, 1905, from Mr. M. T. Donovan, freight traffic manager, Boston & Maine Railroad, in which among other things occurs the following: "Below is a list of our stations to which shipments of petroleum and its products are required to pay a local rate when received from connecting railroads." Then follows a large number of towns on the Boston & Maine Railroad, several hundred, including Portland, Maine. I ask you if it is your opinion that the Boston & Maine Railroad did pro rate with your company to Portland, Maine?—A. As far as Portland, Maine, is concerned, I would say, yes.

Q. They did?—A. I think they have pro rating arrangements to Portland.

Q. Oh, they have now I know, but I am talking about prior to 1905.—A. I think yes.

Q. You think they did?—A. I don't think there is any change in that situation.

Q. Then Mr. Donovan is mistaken, is he?

Mr. MILLER. That is objected to as entirely immaterial.

A. I don't know without going into the records. I have never seen that letter before. I don't know what basis it is written on.

Q. Well, you can read it, can't you?

Mr. MILLER. I object to the question as to whether Mr. Donovan is mistaken, as not an issue in this case. There is nothing about Mr. Donovan in the record.

10900 A. It looks as if it covered a good share of his road.

Mr. KELLOGG. I offer this letter in evidence (petitioner's Exhibit 934) as a part of the cross-examination of Mr. Johnson.

Mr. MILLER. I object to it as no proper part of the cross-examination and as incompetent and irrelevant.

Q. Now, isn't it a fact, as stated by Mr. Donovan, that to nearly all of the New England points on the Boston & Maine road except the Fitchburg division, and former parts of the Fitchburg Railroad, that pro rating arrangements prior to 1906 were not in existence, and that the Boston & Maine road charged its local rate on shipments of oil from the West?—A. I think that is true.

Mr. MILLER. It might charge its local on a pro rate, might it not?

WITNESS. Not on a pro rate. It could charge its local out of a through rate if the other roads were willing to grant it.

Q. But your road was not willing to grant it, was it?—A. No, sir.

Q. And you don't know of any others that were?—A. Why, I have known of some roads that were.

Q. I show you another letter from Mr. Donovan which I ask the examiner to mark (marked petitioner's Exhibit 935). Please look that over and see if that is the same signature as the other letter which you have looked at.—A. Yes, sir.

Q. The same signature?—A. Yes, sir.

10901 Mr. KELLOGG. I offer this letter in evidence as part of the cross-examination of Mr. Johnson.

By Mr. MILLER:

Q. Did you ever see this man Donovan write?—A. No, sir.

Q. Did you ever write to him and get an answer——A. Yes, sir.

Q. ——that you knew was his signature?—A. No, sir.

Q. You don't know his original signature at all, do you?—A. I don't know that that is his personal signature. I should assume that it is from the manner in which it is on the letter.

Q. Merely because it is on a letterhead?—A. Well, the general character of it. There is nothing to indicate that anybody else did sign that. That is all I would be guided by, just by the appearance that is on the letter.

Q. That is, nobody else puts any mark to indicate that he wrote it?—A. No, sir.

Q. But you don't know whether it is genuine or not, do you?—A. I do not.

By Mr. KELLOGG:

Q. Mr. Johnson, you have had correspondence with Mr. Donovan's office, haven't you?—A. Yes, sir.

Q. With him personally, so far as you know? You have written to Mr. Donovan?—A. All of our letters are addressed to Mr. Donovan.

Q. And do the replies come back signed, may of them, with that signature?—A. I would not want to say how many.

10902 Q. Well, some of them?—A. I presume some of them have been with that signature.

Q. And you have relied on those letters and acted on them, with that signature?—A. With that, or any other that had his name attached, we would rely upon it in the natural course of business.

Q. And where the letter came from Mr. Donovan, signed by a clerk, it generally contained some letter after it, didn't it?—A. Very generally.

Q. Where it was signed by him personally, it had no letter after it?—A. Very frequently we get letters that are not signed by the personal individual, that do not show an initial. For that reason I am not always certain.

Q. Well, you know that signature is like the signature you get from Mr. Donovan's office when you write him personally?—A. As I have already said, I would assume that that is Mr. Donovan's signature.

Mr. MILLER. Supposing you did not assume anything——

Mr. KELLOGG. Oh, we will prove this.

Mr. MILLER. ——but were to act and testify with respect to that solely from your knowledge, then you could not say that is Mr. Donovan's signature?

WITNESS. I would not know anything about it.

Q. This letter, among other things, says——

Mr. MILLER. I object to that.

Mr. KELLOGG. I offer the letter in evidence. Mr. Miller objects to it on the same grounds.

Mr. MILLER. Yes; as not proven.

10903 Mr. KELLOGG. It is addressed to Herbert Knox Smith, acting commissioner, Department of Commerce and Labor; dated August 28, 1905.

Mr. MILLER. By the way, what has he to do, under the act creating the Bureau of Corporations, with railroad rates?

Mr. KELLOGG. He had a right to investigate them.

Mr. MILLER. Why, no he hadn't.

Mr. KELLOGG. Certainly he might.

Mr. MILLER. The Interstate Commerce Commission alone has got the right. The Bureau of Corporations is confined to corporations other than railroads.

Mr. KELLOGG. Well, he has no power to regulate the rates, but has a right to investigate them.

Mr. MILLER. No, sir; not under the law.

Mr. KELLOGG. Well, we differ on that as we do on some other subjects.

Mr. MILLER. I was asking for mere curiosity.

Mr. KELLOGG. Oh, I am very glad to gratify your curiosity. This letter reads: "Acknowledging your letter of August 25th relative to rates on petroleum and its products originating in Ohio and Pennsylvania and delivered to us by connecting lines.

"Through rates are published from the oil regions of Ohio and Pennsylvania to points on the following divisions: Fitchburg division, Connecticut River division, Windsor, Vt., and south thereof;

Worcester, Nashua, and Portland division, Worcester, Mass., to Nashua, N. H., inclusive, and Concord Junction to Nashua,
10904 N. H., inclusive; points on the Southern division in a direct line Nashua to Concord, N. H., inclusive.

"Shipments of petroleum and its products coming to us from connecting railroads, through waybilled to points on the divisions above stated, and destined to points on this railroad enumerated in my letter to you of August 22, 1905, to which no through rates are published from the oil regions of Ohio and Pennsylvania, would be subject to a local rate from the nearest point to which through rates are published from Ohio and Pennsylvania." Now, is it your understanding that Mr. Donovan has substantially described in that letter the territory to which his road pro rated and the territory which it refused to pro rate?—A. I would not know.

Q. You would not know?—A. No, sir.

Q. Is not that your recollection, from your connection with them?—A. No, sir.

Q. It is not? Name some other territory than that Mr. Donovan has named where your road, prior to 1906, pro rated.—A. I would not want to name it unless I had the records, and could give definite information.

Q. You can't name any now, can you?—A. Not at the present moment; no, sir.

Q. Since about 1906 all the New England roads have entered into pro rating arrangements with the Western lines on oil, have they not, substantially all of them?—A. That has not been our experience.

Q. Isn't it your experience that generally throughout New England pro rating arrangements now exist with the New Haven
10905 & Hartford road?—A. With the New Haven & Hartford; yes, sir.

Q. Isn't it your experience that generally throughout the Vermont Central pro rating arrangements now exist?—A. We have no different arrangements with them to-day than we have had for seven or eight years past.

Q. Isn't it your experience that generally throughout the Boston & Maine territory pro rating arrangements now exist?—A. Not as yet.

Q. Not as yet?—A. And I will say frankly to you, Mr. Kellogg, that it is partially on account of the enormous——

Q. I am not talking about all the territory. I am talking about the principal towns to which other products pro rate.—A. I would say that to a very great extent it is the pressure of business that is responsible for rates not being put in to very many points. We have not had yet the time to work up tariffs and everything of that kind.

Q. About 1906 the railroads announced that they would enter into pro rating arrangements to the principal points where they had theretofore been pro rating on other products, didn't they?—A. They did not notify their connections.

Q. Will you please produce the tariffs of the Pennsylvania Railroad showing to what territory you now pro rate in New England; will you?—A. I will.

Q. All right, sir.

Mr. MILLER. Are you confining that to oil, or all commodities?

Q. On oil; yes, sir; and also as a part of that the tariffs showing to what territory you pro rated prior to 1906.—A. On oil?

10906 Q. On oil.—A. Yes, sir; in other words, the oil tariffs that were in force prior to 1906 and the oil tariffs that were in force subsequent, as I understand you.

Q. Oh, I don't want to go away back, but long enough prior to show the change——A. Within a reasonable time.

Q. ——to show the change that took place in 1906.—A. Yes, sir.

Q. You know there was a general change in 1906, was there not?—A. Not very general, outside of the New York, New Haven & Hartford.

Q. There was not? Now, how does it happen that from Toledo the Grand Trunk road named the Boston rate to a large number of these towns and your road did not?—A. The Grand Trunk will have to explain that. I am only reading from the tariff as it shows on the record.

Q. The Grand Trunk will have to explain that? Your road did not look after their business very closely, did they?—A. Oh, I think they did.

Q. If they allowed a competitor to make rates into that country that you did not make?—A. I don't believe they would want the traffic at the rate.

Q. You think not, at the revenue?—A. At the revenue.

Q. Do you know whether the Grand Trunk absorbed the arbitraries out of their rate?—A. Under this?

Q. Yes.—A. I know nothing about that.

Q. You know nothing about it?—A. All I know is what is shown right on the face of it.

10907 Q. If those letters I show you were correct, they would have to absorb them, wouldn't they?—A. If they bore on this tariff, yes, sir; they would have to be allowed their locals.

Q. Since the New Haven road resumed pro rating, about 1906, about how much has that reduced the oil rate from western Pennsylvania, Toledo, Cleveland, and Oil City, we will say—those three places—into New Haven territory?—A. I don't know.

Mr. MILLER. Wait a moment. I object to that as not proper cross-examination—as no part of such a cross-examination.

Q. You don't know?—A. I don't know, because I don't know the local rates.

Q. They have met the Boston rates, they have reduced the rate from 4 to 10 cents a hundred, haven't they?—A. I think they have.

Mr. MARTYN. But you don't know?

A. I have no positive knowledge, because I don't know what rate they did charge as their local rate.

Q. When did you first see that Grand Trunk tariff you have been testifying about?—A. You just showed it to me.

Q. Who showed it to you?—A. Somebody here.

Q. Well, as nearly as you can state, when did you first see it?—A. This afternoon.

Q. To-day or yesterday?—A. This afternoon.

Mr. MARTYN. On the witness stand to-day?

WITNESS. On the witness stand to-day. I hadn't seen it before.

Q. That is the first time you had ever seen it?—A. It is.

10908 Q. You never heard of it before?—A. I did not.

Q. You had no conversation with anybody about that tariff before to-day?—A. I could not say whether I have or have not. I never have seen the tariff until to-day. From time to time, in talking over oil matters, somebody might have said something about it, and I may have talked about it.

Q. When was that 26½-cent rate from Olean to Norwood in evidence here first put in?—A. I think it was along in 1886.

Q. In 1886?—A. That is my recollection.

Q. What do you understand by a rebate?—A. A sum that may be returned to the shipper out of a published tariff rate.

Q. That is, the shipper pay the full tariff rate and then the railroad pay back to the shipper a part of it?—A. Yes, sir.

Q. In effect, is there any difference between a rebate and where the shipper in the first instance pays less than the tariff rate?—A. As far as the net revenue on the shipment is concerned, there is no difference.

Q. And if the amount that the shipper pays is not the published tariff rate, there is no difference so far as the tariff is concerned, is there?—A. I don't quite understand you.

Q. Just as much a discrimination for the shipper to pay less than the tariff rate in the first instance as it is for the shipper to pay the tariff rate and get back a part of it?—A. The net result would be the same.

Q. Why, certainly. So you understood Mr. Tilford, of the Standard Oil, to tell you that they did not want any rebates?—A. That they would not accept any rebates.

10909 Q. They did not say they did not want any tariffs like the Olean tariff that were not filed with the Commission, did they?—A. The Olean tariff was not discussed with Mr. Tilford.

Q. Who was it discussed with in the Standard Oil?—A. With Mr. O'Day only, until——

Q. Mr. Daniel O'Day?—A. Yes, sir; until October, in 1889, when I raised the question relative to an advance in the rate, and the advance was made, changing from 7 to 9.

Q. Whom did you raise that question with?—A. My recollection of it now is that it was Mr. Barstow.

Q. F. Q. Barstow?—A. Yes, sir.

Q. He was in charge of the Standard of New York?—A. I was directed to him at that time. It is the only meeting I ever had with him relative to rates.

Q. He was at 26 Broadway?—A. Yes, sir.

Q. And you arranged to raise the rate from 7 to how much?—A. From 7 to 9.

Q. From 7 to 9 cents a barrel?—A. Yes, sir.

Q. From Olean to Rochester?—A. Yes, sir.

Q. The first rate was put in at the request of Mr. Daniel O'Day?—A. Yes, sir.

Q. Mr. Daniel O'Day had charge of the pipe lines of the Standard Oil, hadn't he?—A. He had.

Q. With whom did you make the arrangements to use the rate for shipments to Vermont?—A. Mr. Samuel Goodman.

Q. Who is he?—A. You mean—now, I beg pardon, what rate do you refer to?

Q. The 9 cents a barrel rate.—A. Oh, the 9 cents a barrel
10910 rate. No; I had no talk with Mr. Goodman about that.

Q. Who is Mr. Goodman?—A. He was formerly assistant general freight agent of the New York Central.

Q. What talk did you have with him about this rate?—A. None whatever, as regards the 9-cent rate.

Q. What was the rate you talked with him about?—A. I thought at first you referred to the 26½-cent rate.

Q. No; I was referring to the 9-cent rate.—A. I had no talk with anybody about that rate, outside of Mr. O'Day, until I had the meeting with Mr. Barstow.

Q. With what Standard Oil official did you arrange to use this rate for through billing, or through bill of lading, or whatever you call that paper, to Vermont points?—A. There was no question of through billing or anything of the kind raised. The question was simply the use of the rate on shipments that were consigned to points beyond Rochester.

Q. With whom did you make that arrangement?—A. Mr. O'Day.

Q. Mr. Daniel O'Day?—A. Yes, sir.

Q. Did he, at that time, tell you that he wanted to use that for shipments to Vermont?—A. He did not.

Q. You did not put any limitation on what points beyond Rochester it should be used for?—A. I did not.

Q. Any point?—A. Any point beyond.

Q. You did not state that they must be within the State of New York?—A. No, sir.

Q. Mr. Daniel O'Day is dead, isn't he?—A. He is.

Q. Is Mr. Barstow alive?—A. I assume that he is. I have never heard to the contrary.

10911 Q. What was this conversation you had with Mr. Goodman about the 26½-cent rate?—A. Mr. Goodman first published——

Mr. MILLER. I object to that as incompetent, immaterial, and irrelevant.

Q. Go ahead.—A. Mr. Goodman published the tariff himself in the first place—a New York Central tariff—naming rates from certain points on the B., N. Y. & P.

Q. That is on the Pennsylvania line?—A. Yes, sir; and the conversation was to the effect that that was a proper rate to make for that local trade. There was nothing discussed beyond that.

Q. Well, did he publish the tariff without your consent, do you mean?—A. Why, we had to consent to it, because our agents used it. We had to consent, and we sent it to our agents and notified them to use that rate.

Q. He asked you to join in the 26½-cent rate?—A. He did, and he published the tariff.

Q. Did he tell you at that time that he had an unpublished rate from Rochester to Norwood that was a good deal less than that?—A. As I had already testified, I know nothing whatever about any New York Central rate until the time of the trial in Rochester.

Q. Did you tell Mr. Goodman that you had a rate from Olean to Rochester of 9 cents a barrel or 2.8 cents a hundred?—A. No, sir; I did not.

Q. Or 7 cents a barrel?—A. No, sir.

Q. You did not tell him that. When was this conversa-
10912 tion?—A. I could not say at the present time. It was about the time that he issued his tariff.

Q. Did you tell him anything about the 11 cents a barrel rate from Olean to Buffalo when you joined in this rate?—A. No, sir.

Q. Did he tell you anything about the 12-cent rate from Buffalo to Norwood that was not filed with the Commission?

Mr. MARTYN. I object to that. There is no evidence that there was any such rate at that time.

Q. Did he tell you anything about any such rate?—A. He did not.

Q. So you and Mr. Goodman got together and put in a 26-cent rate, each one of you having on your own lines an unpublished rate very much lower, and did not tell the other about it. Is that right?—A. The one had no bearing on the other.

Q. Well, you did not tell him about it?—A. Certainly not.

Q. And he did not tell you?—A. Most assuredly he would not.

Q. Why wouldn't you—because you did not want him to know it?—A. Certainly I did not want him to know it.

Q. No; you wanted it kept secret.—A. I wanted it kept away from Mr. Goodman, but not to keep it secret; no, sir.

Q. Well, keeping it away from Mr. Goodman was keeping it secret from Mr. Goodman, wasn't it?—A. I certainly did not want Mr. Goodman to know the rate, and I assume that he did not want me to know the rate—in neither case.

Q. So each of you went on with your rate, the other not knowing anything about it, and the Standard Oil got both ends of

10913 it? Is that about right?—A. I could not answer that question, Mr. Kellogg.

Redirect examination by Mr. MILLER.

Q. Was there anything unusual or remarkable about the fact that you desired that Mr. Goodman of the New York Central should not know the rate of your road, and he desire that you should not know the rate on his?—A. I certainly did not want him to know the rate on our road, because I wanted to take every pound of oil from Olean instead of from Buffalo that we could.

Q. Was there anything remarkable or unusual about that?—A. No, sir.

Q. Between two competing railroads?—A. No, sir.

Q. There was a Standard Oil refinery at Buffalo, was there not?—A. Yes, sir.

Q. And on shipments of oil out of Buffalo the New York Central would have gotten those shipments to those points in northern New York to Rochester——A. Yes, sir.

Q. And to points east of Rochester and north of Syracuse?—A. Whatever——

Q. While on shipments from Olean you would get the haul from Olean to Rochester?—A. We would get some revenue on those shipments.

Q. I don't know whether you answered my question, Mr. Johnson. Was there anything unusual or remarkable——A. There was not.

Q. ——about the fact that each of you wanted to keep the rate on your own road, on competitive business, from the other?—

10914 A. There was not.

Q. That is usual, isn't it?—A. It is.

Q. I mean the State rates that were not required to be filed with the Interstate Commerce Commission?—A. Yes, sir.

Q. And as to filed rates you did not put yourself out to inform your competitor what your rates were, did you?—A. No; we have to hunt for them sometimes.

Q. You have to hunt for your competitor's rates?—A. Yes, sir.

Q. You did not find him tumbling over himself to inform you of his rate?—A. I never knew him to be guilty of any such thing.

Q. Was that withholding of those rates from the New York Central people by you done at the instance and the connivance of the Standard Oil Company?—A. No, sir.

Q. Not in the least?—A. Not in the least, in any way, shape, or manner.

Q. I wish you would take Mr. Kellogg out here somewhere and convince him of that [witness laughs].

Mr. KELLOGG. I do not think he can do it.

Q. They did not have anything to do with it, did they?—A. They did not.

Mr. KELLOGG. They simply got the benefit of it.

Q. Now, about this pro rating business, Mr. Johnson; what is a pro rate?—A. A pro rate is a division of a rate based upon the miles

that the traffic is moved. That is a strict pro rate. That is varied from time to time.

Q. A rate according to mileage?—A. Yes, sir.

Q. A rate according to distance; that would be strictly a
10915 pro rate. Now, in practice what was pro rating prior to 1906, prior to the Hepburn Act?—A. I did not——

Q. What was the pro rate in fact, in practice? It did not always result in practice, did it, in a division of mileage?—A. A division of the rate may be based on constructive mileage instead of upon actual mileage.

Q. I see. Some road may put it that they want a little more than their mileage allowed?—A. Yes; a road that may have a mileage of only 25 miles may demand a constructive distance of 100 or 150 miles.

Q. Is pro rating connected with or the same as the making of through rates or joint through tariffs?—A. It is part and parcel of the work necessary to divide a rate to know what revenue is to go to each road.

Q. If there is pro rating, there is a joint through tariff made, is there?—A. Almost always. It is very seldom that percentages are agreed upon without being followed by a through tariff of some kind.

Q. The division on a pro rate is determined by these so-called percentage sheets?—A. Yes, sir.

Q. Prior to the passage of the Hepburn Act in 1906, the matter of joint through rates was altogether a matter of agreement between the railroads, was it not?—A. Yes, sir.

Q. That is, there was not any legal compulsion upon the railroads to enter into a joint through tariff or a joint through rate?—A. No, sir.

Q. I mean connecting railroads.—A. By agreement.

10916 Q. Altogether a matter of agreement?—A. Yes, sir.

Q. By the passage of the Hepburn Act you understand now that it is in the power of the Interstate Commerce Commission to prescribe and compel joint through rates?—A. We understand it is their privilege to have the roads comply, providing there is no through route already established.

Q. Then if connecting roads refuse, now since the passage of the Hepburn Act, which took effect in 1906, if connecting roads should refuse to make joint through rates and none existed between them, that might be compelled, might it not?—A. We could make application to the Interstate Commerce Commission and ask them to establish it.

Q. In the absence of agreement would that compel prorating?—A. Not absolute prorating.

Q. But it would compel a single unit rate away through, and a division of that rate on some basis?—A. Yes, sir.

Q. On a basis which the Interstate Commerce Commission might prescribe?—A. Yes, sir; when the question of through rates——

Q. And practically that would be on a mileage basis or a constructive mileage basis?—A. Yes, sir.

Q. So that it would be substantially a compelling of prorating, wouldn't it?—A. Yes, sir; and the principle of through rates is growing all the time.

Q. Now, all of this business of prorating about which Mr. Kellogg has been so inquisitive, prior to 1906 was a matter of agreement or want of agreement between the railroads, wasn't it?—A. The establishment of through rates?

10917 Q. Prorating—this absence of prorating in this New England territory about which he asks? If there was prorating, it was because the connecting railroads so agreed?—A. Yes, sir.

Q. And if there was not, it was because they failed to agree; was that it?—A. Yes, sir; that is right.

Q. It was absolutely a matter of agreement or want of agreement?—A. It was.

Q. Where there was no prorating, why wasn't there, Mr. Johnson?—A. Principally because some one or more of the roads interested could obtain a greater revenue in other ways, and they desired to protect their own revenue.

Q. They desired to get so much legitimate revenue as they could in the conduct of their own business?—A. Yes, sir.

Q. So far as you know, was the Standard Oil Company, through its connivance with the railroads, under all of that scheme?—A. Not as far as I know.

Q. You did not know anything about anything of that kind? So far as you know, it was the action of the railroads in the conduct of their own business, acting in self-interest?—A. The information came to us that it was absolutely based on revenue.

Q. Now, you have said that since 1906 the absence of prorating arrangements with other roads had been due to the pressure of business. Since the passage of the Hepburn Act of 1906, Mr. Johnson, there has been a pretty thorough overhauling by all the railroads of all their tariffs and tariff arrangements, has there not?—A.

10918 They have made efforts starting in that direction, but the work is very, very far behind. It is absolutely impossible at the present time to complete that.

Q. I say, since the passage of the Hepburn Act, and by the passage of that act, and the action of the Interstate Commerce Commission under it, it became necessary to revise many bases of rates, did it not?—A. Yes, sir.

Q. And the reconstructing of rates; and the railroads have taken up this subject of joint through rates and the general revision of the tariff situation, haven't they, to a very great extent?—A. Yes, sir.

Q. You spoke of certain parts of New England, in your answer to Mr. Kellogg, where rates were unremunerative and where, up to the present time, you had not entered into prorating arrangements. What parts were those—what territory?—A. The northern New England points.

Q. And has the fact that prorating arrangements offered to you were unremunerative had anything to do——A. In some cases, and in

other cases the question is under negotiation to-day, and through the pressure of business has been deferred.

Q. Further, upon cross-examination you stated that any refusal to prorate or failure to prorate on petroleum and its products was not due to any particular desire to keep that oil—that commodity—out of the prorating plan, was it?—A. No, sir. In many cases we would have been very glad to have put it in.

Q. And why didn't you?—A. Because we could not complete arrangements whereby we could put it in.

Q. You mean arrangements with other railroads?—A. Yes sir.

10919 Q. Did the Standard Oil Company prevent you or seek to prevent you doing it?—A. No, sir; not as far as I have any knowledge.

Q. Now, with respect to comparative rates on oil out of Bradford and Oil City and Struthers, and out of Olean to these points in New England, say Vermont, what have you to say about the comparison of these rates? Again, state why Bradford did not get as favorable a rate as Olean?—A. At first when we went in there——

Q. Is Bradford on your line?—A. It is to-day, yes sir; but prior to the last few years it was a narrow-gauge line and we had nothing whatever to do with the oil traffic out of there, and when we first opened up the standard gauge line through trackage over the B., R. & P., we endeavored to put in rates the same as we supposed they were via the other lines. In some cases we found those were too high. and to-day we have changed Bradford from the 60 per cent basis and put it upon the same basis as Olean, and the rates to-day are upon the same basis, that is, to through points, wherever through rates are established. In regard to the other points, they take what is known as the 60 per cent basis. For instance, Oil City, Struthers. Titusville, and Rouseville are all 60 per cent points and take 60 per cent class rates.

Q. Now, will you explain what 60 per cent points mean.—A. 60 per cent points mean taking 60 per cent of the New York-Chicago rates, and establishing the class rates on that basis

10920 Q. And there is a certain territory as to which it has been determined that that territory will take 60 per cent of the Chicago-New York rate?—A. Of the New York-Chicago rate. yes. sir.

Q. On eastbound traffic?—A. Yes, sir.

Q. And how has that been determined?—A. By understanding between the different roads to establish a uniform basis.

Q. That enters into the basis of the rate making in the territory between the eastern seacoast and Chicago, say?—A. Yes, sir.

Q. Central Traffic Association and Trunk Line territory?—A. Yes, sir.

Q. And how long has that been so?—A. A good many years. I could not tell you how far back.

Q. And who was it that determined what basis Bradford should take?—A. Well, we determined—as far as we alone are concerned, we would determine that.

Q. I know, but generally?—A. Generally speaking, Bradford would be understood, eastbound, as a Buffalo rate point, the division being at Salamanca.

Q. The division was at Salamanca?—A. The division of the territory was at Salamanca.

Q. Speaking of it being a Buffalo rate point, is that the same as stating that it is a 60 per cent point?—A. No, sir; it is less than a 60 per cent point.

Q. It is now a Buffalo point?—A. Yes, sir.

10921 Q. Formerly it was a 60 per cent point?—A. We had some tariffs that we issued from there on a basis of 60 per cent.

Q. And Oil City and Struthers are in the 60 per cent territory, are they?—A. They are.

Q. Did your road run to Oil City and Struthers?—A. Yes, sir.

Q. From those points and from Bradford, did you have competition?—A. Yes, sir.

Q. What road ran out of Bradford besides yours?—A. The B., R. & P. and the Erie.

Q. Why didn't you name them out of Bradford the same rate that you would name out of Olean?—A. Through a misunderstanding of the situation in the first place, which was afterwards corrected. It was only to some territory where the rates were higher; westbound territory they were exactly the same.

Q. When did you make that correction?—A. I don't remember now. I think it was in 1906, but I won't be sure.

Q. Did you make it as soon as your attention was called to it?—A. Not immediately. We first investigated and went into the situation, found out what the situation was.

Q. And then corrected it?—A. Yes, sir.

Q. Now why do not Oil City and Struthers take the same rate as Olean?—A. Because they are in greater distance and they are in the 60 per cent basis for class rates, and we would not want to go below that basis for any commodity rate.

Q. Why not?—A. Because with the additional distance, etc., we do not think it would be remunerative, and it would disturb the relation of all other rates.

Q. It would disturb the whole rate basis of that section, would it?—A. It would, and adjoining sections.

Q. And your tariff would not justify it?—A. No, sir.

10922 Q. You spoke of the rate per ton per mile on the oil traffic between Olean and Rochester, carried at 9 cents per barrel, and on your direct examination you said that was remunerative. What was there about that traffic that enabled you to carry that?—A. Because it comes to us in large quantities; it is loaded in the yards and on the tracks of the refineries there at Olean; we move it through to Rochester and place it on the tracks and in the yards of the Vacuum

Oil Works. We have no terminal expenses at either point, no distribution through the yards of delivery through the yards, and it is the most favorable form of traffic that we have, not only in oil but in other commodities.

Q. Now, do those circumstances fairly enter into the question of determining what is a just and reasonable rate on the traffic?—A. To our mind they do.

Q. This mileage of ¾ of a cent that is allowed on tank cars, is that the usual mileage on cars of that kind on all railroads?—A. On tank cars; yes, sir.

Q. And is now put upon tariffs and has been for quite a while on state traffic, has it not?—A. Yes, sir.

Q. And it was about the time of the passage of the interstate commerce act that you paid the mileage and increased your rate correspondingly?—A. Yes, sir; so it could be covered by tariff.

Q. Now referring to the matter of blind billing and to stating a rate in a waybill. Is there anything in the conduct of a railroad that requires the conductor of a freight train to know what the rate
10923 is on the property that he is transporting in his train?—A. No, sir.

Q. Nothing at all—or the engineer or the fireman or the switchman?—A. No, sir.

Q. You can not see any economic reason, so far as they are concerned, of stating the rate in a waybill?—A. No, sir.

Q. What is the object of stating a rate in a waybill? What economic or business purpose does it accomplish?—A. It enables the agent at delivering point to collect the charges due on the shipment when he delivers it.

Q. If he had nothing to do with the charge and it was to be paid through some other office miles away, then there would not be any reason in the world for putting the rate into the waybill?—A. None whatever.

Q. You say the conductor here did not carry a waybill but carried a running card.—A. I say that is the general practice. The conductor moves the car on a running card, and in almost all cases the revenue waybill is sent by mail.

Q. Sent to the agent at the other end?—A. Yes, sir.

Q. Does the running card that the conductor has show the rate?—A. No, sir.

Q. In your cross-examination you spoke of having a little talk with Mr. O'Day in connection with the matter of putting the rate in from Olean to Rochester. When was that talk?—A. I could not give you the date now.

Q. In connection with what rate was it?—A. No specific rate. It was generally the shipments to eastern points. He stated to us that if we would handle the shipments on that rate he could give
10924 us some eastern oil. I investigated and found, as nearly as I could get information, that it was practically the proportion we would receive if we were able to issue through rates, and that fact

remains to-day. Our proportion of through rates, for instance, on this Boston & Albany tariff is only 3 cents.

Q. How early was that, do you think, that you talked with Mr. O'Day?—A. I think it was about 1885 or 1886.

Q. Was it before the passage of the interstate commerce act?—A. It was.

Q. At that time was this Salamanca and another route from Salamanca competitive with you?—A. Yes.

Q. Did that enter into the making of the rate also?—A. It did at first, but later on, when the unloading rack was taken down, of course that removed the competition.

Q. But to start with, that was true, was it?—A. Yes, sir.

Q. Now, what was your talk with Barstow? When was that?—A. That was in October, 1889.

Q. And that was with reference to what?—A. To advancing the rate from 7 cents per barrel to 9 cents.

Q. Did you tell him you were going to advance it?—A. Yes, sir; the conversation was very short, and I told him we wanted to advance the rate and he agreed to it. I told him why.

Q. And you have had no discussion with any Standard Oil man since respecting the rate, since that time, until you talked with some of us concerning your testimony here or concerning your
10925 testimony at Rochester in the trial of the case there?—A. Up to that time no conversation.

Q. Was there anything said by any of these Standard Oil men about your giving them from Olean a lower rate than others—independent refiners, shippers—were getting from Pennsylvania points?—A. No, sir.

Q. Not a word said?—A. Not a word.

Q. Now, when you had the talk with Mr. Tilford when he told you that the Standard Oil would not accept rebates, what was the conversation?—A. We were discussing some of the questions relative to the complaint that had been made before the Interstate Commerce Commission on the shipment of oil from Titusville and Oil City to Perth Amboy by Buffalo and the Lehigh Valley road, the independent refiners complaining because we charged them on the weight of the barrel, and they demanded that we should carry it for the net weight of the oil—that is, in other words, 320 pounds to the barrel, carrying the barrel free, and it was at the time we were discussing that that this other question was also asked.

Q. And what did Mr. Tilford say to you?—A. He said they would not accept rebates.

Q. Did he say anything about the rates to others?—A. No, sir; well, he made this additional statement, that they wanted the independent refiners to be on the same basis, tariff rates.

Q. They and the independents to be on the same basis, namely, tariff rates?—A. Yes, sir.

By Mr. KELLOGG:

Q. And the independent tariffs were published and the
10926 Standard Oil Company's tariffs were not published?—A. No, sir.

By Mr. MILLER:

Q. You stated upon your cross-examination that the 9 cents per barrel tariff was made upon a printed blank?—A. What we call a rate order.

Q. Was that the same blank and was that made in the same way that other commodity tariffs, State tariffs, were made during that time upon your road, covering other commodities?—A. It was.

Q. There was not anything peculiar about that oil tariff in that respect?—A. There was not.

Q. In some of the tariffs, as you testified, namely, the interstate tariffs, covering traffic from one State into another, there were contained the words: "To be posted in each freight station as required by law," while the State tariffs contained the statement, "Not to be posted." Were the interstate tariffs that were filed with the Interstate Commerce Commission in any manner posted at the stations, upon the wall, or in any other way so that the public could conveniently inspect them?—A. They were not posted on the wall, but a notice was there that they could be inspected on application to the agent.

Q. Now, section 6 of the interstate commerce act all the time provided with respect to interstate tariffs filed with the Interstate Commerce Commission that the tariff should be printed and copies of the tariff should be posted in at least two public and conspicuous places in each station, in such manner that they could be con-
10927 veniently inspected by the public?—A. Yes, sir.

Q. Were any of those interstate tariffs posted in that way?—A. At first they were all posted in that way, but we found that it was not practicable; that the information was not given to the public, and that the spirit of the law was being avoided, and we therefore changed and put them in the hands of the agent and posted the notice that they could be seen on application.

Q. Then, from that time on they were just kept in the hands of the agent?—A. They were, in his file.

Q. The same agent that had the State tariff?—A. Yes, sir.

Q. And did he keep them in the same way and in the same book, the State and the interstate tariffs?—A. In the same series of books; they were in the same book.

Q. I see, but the same book would contain both?—A. Yes, sir.

Q. Then, so far as the posting was concerned, except for the card on the wall, there was just as much posting of the State as there was of the interstate tariffs in fact, was there not?—A. They were all together in the same file.

Q. And if any shipper wanted to find out the rate he went to the agent?—A. Yes, sir.

Q. That is the usual way, is it not, in which rates are obtained? The shipper asks the agent how much the rate is, and he quotes the rate?—A. That is the usual way, trying to get them to look for themselves.

10928 Q. Trying to get them to read tariffs. We have had some difficulty in getting much out of some of the tariffs that the Government produced here. Did your road have any other connection with the New York Central than Rochester and Buffalo by means of which the route could have been made from Olean to points in northern New York that were named in this 26½-cent tariff to Norwood?—A. Considering the Pennsylvania Railroad, yes, sir; additional routes could be made via Newbury Junction and thence via the Fall Brook road.

Q. How about Canandaigua?—A. They could have been made via Williamsport and Canandaigua, or going to the extreme, they could have been made via New York and Sixtieth street.

Q. How about Himrods?—A. There is a connection there also.

Q. Patton?—A. Yes; there is a connection there. That is in the central part of the State.

Q. And Clearfield?—A. Yes.

Q. Then, if this 26½-cent rate named in that tariff, from Olean to Norwood, the tariff which you said applied only via Buffalo and Suspension Bridge and the Rome, Watertown & Ogdensburg—if that had been applicable over any of the connections, the Pennsylvania road with the New York Central, or if it had been applicable by way of Rochester, it would have been applicable through these other connections, too, would it not?—A. I would understand the same ruling, the same line of reasoning, would follow.

Q. When you speak of Suspension Bridge in this connection, you mean the station at Suspension Bridge?—A. It is R., W. & O., New York station, Suspension Bridge.

10929 Q. That is the terminus of the Rome, Watertown & Ogdensburg on the west, isn't it?—A. Yes, sir.

Q. It starts from there and runs east?—A. Yes, sir.

By Mr. KELLOGG:

Q. You said Mr. Tilford said he didn't want any rate other than the tariff rate and he wanted the independents to pay the same.—A. Yes.

Q. The independents' tariff rates from Oil City and Struthers and Clarendon and Bradford were filed with the Interstate Commerce Commission, weren't they?—A. Wherever they were an interstate rate, yes; as State rates, no.

Q. Did the independents ship any oil into northern Vermont or into New York from those Pennsylvania points except on these published tariff rates? Their rates were published and filed, weren't they?—A. As far as that territory is concerned, yes, sir.

Q. They did not ship on any combination of local rates, did they?—A. To that territory, no.

Q. They did not have the advantage of this 9-cent rate which you made to the Standard Oil, did they?—A. From Olean to Rochester?

Q. Yes.—A. No, sir.

Q. And they did not have the advantage of the 9-cent a hundred rate of the New York Central from Rochester to Norwood, did they?—A. I know nothing about that.

Q. Did you ever go to the station at Olean to see if that 9-cent a barrel rate was in the book of the station agent?—A. I have been there at different times.

10930 Q. When did you go there?—A. I could not give you the date; I made no record of it.

Q. Did you ever see it in the book?—A. I certainly think I have.

Q. You think you have?—A. Yes, sir.

Q. Were you in the habit of going around to stations to see if that tariff was in the books?—A. At different times I have looked them over casually. I did not check every tariff that was in there.

Q. Do you ever recall of seeing that tariff in the station agent's book at Olean?—A. I have seen it at Olean station.

Q. When?—A. I could not give you the date.

Q. At the time of the investigation of the grand jury?—A. No, sir.

Q. Your investigation was somewhat enlivened by that, wasn't it?—A. It was not.

Q. You did not look into the matter about that time?—A. Not specifically; there was no occasion that I should.

Q. It was about that time that you changed all these rates, wasn't it?—A. No.

Q. Did you change them before?—A. Some of them had been changed before.

Q. Did you change this 9-cent rate before that?—A. As far as the 9-cent rate was concerned; no, sir.

Q. No, sir; that is what I thought.—A. That was in force from year to year.

Q. Now you said you got just as large a proportion under the 26½-cent rate——A. No, I didn't.

10931 Q. Well, under that tariff, then?—A. No, sir; not under that tariff. Let me set you straight, Mr. Kellogg.

Q. All right.—A. I said that the proportion we got out of those through New England rates there was practically the same, namely, 3 cents per 100 pounds.

Q. Did you ever ship a barrel of oil on that to any New England town?—A. Yes, siree.

Q. When?—A. I will give you the date if you want it.

Q. Give us the date and the shipment.—A. Yes, sir; I can give you some shipments.

Q. All right; since 1900. Will you?—A. Yes, sir.

Q. You give us any shipments to New England points other than Vermont.—A. I mean Boston & Albany points named on that tariff.

Q. All right; you give us some shipments from Olean, will you?—A. Yes, sir.

Q. Very many more shipments were made to New York points, were there not, under the other tariffs?—A. New York State points?

Q. Yes.—A. Covering the whole State?

Q. Yes.—A. Oh, I think there were.

Q. And on those your proportion under this 26½-cent rate would have been greater than your 9 cents per barrel?—A. Why, that 26½-cent rate applied to only the half-dozen points.

Q. Well, let us see about that. Didn't it apply to all points?—A. It applied simply to those specific points that are named, and to nothing else.

10932 Q. Now, did it? Let us see about that: "Rates to intermediate stations must not exceed the rates to next station of greater distance on the same railroad."—A. "Must not exceed."

Q. Yes; well, weren't they equal? Wasn't that a tariff rather to all stations intermediate?—A. I do not think so.

Q. You do not think so?—A. That was simply a State tariff, and it had reference to interstate; that is an interstate rule. That tariff was not filed for the state rates.

Q. It was filed with the Interstate Commerce Commission?—A. Giving them the information to which they were entitled, the interstate rates, and that was the intention of it.

Q. But in filing it with the Interstate Commerce Commission it gave the information as to all rates, didn't it?—A. Incidentally it did; yes, sir.

Q. Incidentally? You didn't make any exception in your filing, did you?—A. We would if it had not been for those New England rates in there, we would not have filed it.

Q. Now, you said that the Standard Oil rate of 9 cents a barrel was a profitable rate?—A. Under the conditions we believe that it is.

Q. Did you ever make any calculations to see whether it was profitable or was not?—A. I have from time to time.

Q. That was rather an expensive road, with heavy grades, wasn't it?—A. No, sir; not extremely so.

Q. What is the highest grade between Olean and Rochester?—A. I could not say definitely, but I think it is 60 feet.

Q. Sixty feet to the mile?—A. Yes, sir.

10933 Q. That is a grade of over 1 per cent, isn't it?—A. Slightly.

Q. What is the maximum elevation on that line?—A. I don't know.

Q. Well, that is a very heavy grade, 1 per cent, isn't it?—A. I do not think so.

Q. You do not?—A. No, sir; not when you have to contend with 120 and 140 feet.

Q. Now, you said you had no terminal expenses. Any oil shipped from Bradford through Olean or from Oil City through Olean would be delivered in the same way, wouldn't it?—A. Consigned to points beyond?

Q. Yes.—A. It would be.

Q. No more expensive than you had with the Standard Oil?—A. Not for the same work at the same points; the expense would be alike.

Q. Yet those Oil City and Struthers and Bradford people did not have the advantage of this 9-cent rate, did they?—A. Not of that 9-cent rate, but we believe they had the advantage of an equally good through rate.

Q. Well, if you can make a 15-cent rate equal a 26½-cent rate, why, they did, that is all.—A. You are bringing in information that we had no knowledge of and had no bearing on the case.

Mr. MARTYN. Counsel are basing their statement on Mr. Schindler's erroneous statement of the tariff.

Mr. KELLOGG. We are basing it on yours.

10934 Mr. MARTYN. You have forgotten what Mr. Schindler overlooked.

Q. Is Warren, Pennsylvania, on your line?—A. Yes, sir. But let me explain: There are no refineries at Warren.

Q. Well, Struthers?—A. Yes, sir.

Q. That is practically the same place?—A. It is north of Warren, several miles north.

Q. Two miles difference?—A. Two miles, perhaps it is, from the city line.

Q. The distance from Warren to Rochester is 167 miles, isn't it?—A. I think that is right.

Q. The rate was 46.4 cents a barrel, wasn't it—14½ cents a hundred?—A. I think it was 45 cents.

[Mr. Kellogg hands paper to witness.]

WITNESS. Oh, that is not our tariff.

Q. Pennsylvania Railroad tariff, effective July 13, 1904.—A. I think we have a 45-cent rate there just the same—45 cents a barrel.

Q. Well, that is just five times the rate from Olean to Rochester, isn't it?—A. Yes; per barrel.

Q. And the distance is only about sixty miles farther?—A. Under different conditions and circumstances.

Q. One is a Standard Oil and the other is somebody else?—A. No, sir.

Q. The Standard Oil is the only shipper from Olean, isn't it?—A. Yes, sir.

Q. Are there other shippers from Struthers, independent?—A. Yes, sir.

10935 Q. The Struthers rate to Rochester is 45 cents a barrel, is it?—A. That is my recollection.

Q. And the Standard Oil's rate from Olean is 9 cents a barrel?—A. Under entirely different conditions.

Q. Yes. The one was from Standard Oil and the other was from independents? That is correct, isn't it?—A. But the inference from that statement is that the conditions are the same. That I dispute and deny.

Q. What are the differences in the conditions?—A. One is the difference between refineries and terminal delivery and the other is for local distribution.

Q. The one between refineries and terminal delivery from Olean to Rochester was used for local deliveries into New York and Vermont, wasn't it?—A. Not so far as the P. R. R. was concerned; there was no local delivery about it.

Q. Do you mean there were no shipments of refined oil from Olean to northern New York and Vermont on that rate?—A. I do not.

Q. You know there was, don't you?—A. I know that you say there was.

Q. Well, wasn't there, Mr. Johnson?—A. And I believe there was.

Q. Yes, sir.—A. But that is not local distribution for the P. R. R.

Q. Oh, it wasn't?—A. No, sir.

Q. It was local to the Standard Oil?—A. That is entirely on some other road, and we had nothing to do with their terminals—not one thing. If you will compare that rate with division of through rates you will find the comparison favorable.

10936

By Mr. MILLER:

Q. Referring now to the matter of using State rates—that is, rates for transportation between points entirely within a State—on tariffs not filed with the Interstate Commerce Commission, and using those in the transportation of commodities destined into another State, state, if you know, whether or not such rates were available and used by shippers of petroleum and its products who were among so-called independents or shippers other than the Standard.

Mr. KELLOGG. I object to that. Let him name the rate that he has used—not generally whether they are used. The tariff is the best evidence.—A. There were instances where the local rate was used up to the junction point in the absence of through rates.

Q. Was it true that during the period from the passage of the interstate commerce act until up, say, to 1906, that State rates were used in combination to form through rates, the traffic originating in one State and destined to another State?—A. Are you speaking of general traffic?

Q. Yes.—A. Yes, sir.

Q. Do you know of any attempt on the part of the Government to indict or punish anybody for it prior to the indictment of your road about 1907?—A. I don't know anything about it, Mr. Miller.

Q. You haven't heard of their starting out on any campaign to indict shippers and railroads during that twenty years before, had you?—A. I hadn't heard of it; no, sir.

10937

Q. The practice was so general and so prevalent, so universal, that everybody, shippers as well as railroads, were familiar with it during those twenty years, weren't they?—A. As a general proposition they were.

Q. It was not until the campaign against the Standard Oil that such a thing was picked out as the basis of an indictment, was it?—A. Well, I don't know about that, Mr. Miller.

By Mr. KELLOGG:

Q. Now, name a case where the Pennsylvania Railroad used a State tariff for a through shipment in interstate business.—A. Why, we had many rates on lumber and on stone——

Q. I know you had. A. ——and different commodities where we used the rate up to the local point.

Q. Name one instance where you made a shipment, on the Pennsylvania road, other than of oil, and used a local tariff without its being filed with the Interstate Commerce Commission, in an interstate shipment.—A. Shipments of lumber within the State of New York consigned to points beyond, where we used the local rate up to Buffalo.

Q. When was this?—A. Year in and year out.

Q. For what shippers?—A. Miscellaneous shippers.

Q. Well, name one. I don't want any miscellaneous. I want one named shipper.—A. I can't give you the names of the firms now, but there were——

Q. Located at what place?—A. Ischua and Franklinville.

Q. Let us get those. Who were the lumber merchants there?—A. I can't tell you now all that time, but Elliott & Son were
10938 part of the time.

Q. Did they make a shipment on a through bill of lading over your line of road and use a rate not filed with the Commission?

Mr. MILLER. I object to that.

A. They made a shipment consigned to a point beyond. Different shippers.

Q. I know, but did they make a shipment on a through bill of lading over your line of road on a rate not filed with the Interstate Commerce Commission?

Mr. MARTYN. I object to that, because there has been no showing of any through bill of lading in this case.

Mr. KELLOGG. Oh, yes; there has.

A. I couldn't answer as to the bill of lading; as to the destination and the rate, yes.

Q. But you don't know whether it was a through bill of lading?—A. It would not be a through bill of lading, as to our understanding of it, inasmuch as it did not cover a contract for a through rate.

By Mr. MILLER:

Q. Do you regard the document that was shown you by Mr. Kellogg, called a bill of lading, petitioner's Exhibit 611A, to be a through bill of lading?—A. I do not consider it a through bill of lading.

Q. If the property that was there mentioned, starting at Olean, was destined to Burlington, Vermont, you would not regard that as a through bill of lading for that entire transportation?—A. That is not my understanding of it.

By Mr. KELLOGG:

Q. What is a through bill of lading?—A. A through bill of
10939 lading is where a contract is made covering the movement of the freight from point of origin to point of destination, contracting for through rate, and all other essential points.

Q. Now, let us see. To whom do you issue your bill of lading?—A. To the shipper.

Q. In it you state the origin of the freight, don't you?—A. Yes, sir.

Q. And you state the point to which it is to be shipped?—A. He does.

Q. He does?—A. He gives us those instructions.

Q. That is in the bill of lading?—A. As a commercial necessity.

Q. That is, you give the shipper a receipt, or bill of lading as it is called, in which you name the goods you have received; that is one thing, isn't it?—A. In which he names the goods that are delivered to us.

Q. Yes; but you sign it? The railroad company signs it?—A. After he has stated his——

Q. He makes out a bill of lading, doesn't he? He states that he is the shipper, he states who the consignee is, doesn't he?—A. He does.

Q. And you sign it, don't you?—A. We do.

Q. And give it to him?—A. We do.

Q. And if that is a shipment from Olean to Burlington, it is a through bill of lading, isn't it?—A. I do not so understand it.

Q. Why?—A. Because it does not cover all of the elements that are essential and because there is a distinct statement in the
10940 conditions on the bill of lading that we are not responsible after it leaves our road.

Q. Now, isn't it a fact that there are many through bills of lading where the roads agree that they will only be responsible while the goods are on their own line?—A. But then they state other essential points in regard to it, the contract for through route and through rate under which the shipment shall be made.

Q. Frequently a through bill of lading does not name any rate.—A. I do not consider that a through bill of lading; that is a local bill of lading.

Q. This is one bill of lading that you have issued for that carload, isn't it?—A. It is.

Q. And you name the consignor and the consignee?—A. We carried out the instruction of the shipper in giving that bill of lading, as a commercial necessity, knowing where the shipment was to go to, but we did not contract to handle that through.

Q. When you issue a bill of lading from New York to San Francisco, don't you frequently in your bill of lading limit your liability to your rails as far as Chicago?—A. To our rails perhaps as far as Chicago, but not beyond.

Q. That is, you limit your liability to your own rails, don't you?—A. Yes, sir.

Q. Very well. That is what you did in this instance, isn't it?—A. To our own rails as far as Rochester, but not beyond.

Q. Why, certainly. Your rails do not run beyond Rochester, do they?—A. No, sir.

10941 Q. Your rails do not run west of Chicago, do they?—A. No, sir.

Q. A bill of lading that limits your liability as far as Chicago is a through bill of lading?—A. It is a local bill of lading, but not a through bill of lading.

Q. Well, it is a through bill of lading, too, isn't it?—A. I do not so understand it.

By Mr. MILLER:

Q. For the carriage over your own line to the connection with the connecting carrier?—A. Our contract is only over our own line.

Q. Your duty is fulfilled when you carry it and turn it over to the forwarder to your connecting carrier for transportation by it?—A. Yes, sir.

Q. You are no longer responsible.

By Mr. KELLOGG:

Q. Well, this is the usual form you use on all your business, isn't it?—A. It is.

Mr. KELLOGG. I will have a statement prepared of the things I want you to look up, and if you will get them for me to-morrow I would like to examine you.

WITNESS. I will get them for you and send them just as quick as I return home.

(An adjournment was here taken until the morning of Wednesday, October 28, 1908, at 10.30 o'clock.)

10942 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, October 28, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, pursuant to adjournment, at the above time and place.

Present, on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn.

WILLIAM S. KALLMAN, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Your name is William S. Kallman?—A. Yes, sir.

Q. Where do you reside?—A. Jersey City, New Jersey.

Q. And what is your business?—A. Railroad business.

Q. In connection with what railroad or railroad system?—A. New York Central & Hudson River Railroad system.

Q. What is your position with that system?—A. Second assistant freight traffic manager of the lines east of Buffalo.

Q. And those lines comprise what?—A. The New York Central & Hudson River Railroad, the West Shore Railroad, the Boston & Albany Railroad, the Rutland Railroad, the New York & Ottawa Railway, the Ottawa & New York Railway and leased lines.

10943

Q. How long have you been connected with the New York Central Railroad line?—A. Since June 1, 1901.

Q. How long have you been in your present position of assistant freight traffic manager of the lines east of Buffalo?—A. Since October 15, 1907.

Q. What has been your railroad experience?—A. 26 years.

Q. With what roads and in what capacities?—A. Chronologically?

Q. Yes, that is best.—A. With the Erie Railroad for about a year; with the New York & Sea Beach Railway for two years; with the Pennsylvania Railroad for three years; with the Official Classification Committee of the Railroads for seven years; with the board of managers of the Joint Traffic Association for four years; secretary of the Official Classification Committee for a year or thereabouts; chief of Tariff Bureau of the New York Central & West Shore railroads for three and one-half years, from June 1, 1901, to July 1, 1904; from July 1, 1904, to October 1, 1906, first assistant general freight agent; from October 1 or 15, one or the other, 1906, to May 15, 1907, general freight agent of the West Shore, and from May 15, 1907, second assistant freight traffic manager.

Q. And during your railroad experience in these positions, and during your experience almost from the beginning, have you had to do with the matter of tariffs, their making and interpretation?—A. I have had to do with tariffs in one form or another for twenty years; with their interpretation for twelve years; with their construction, and so forth, for eight years.

10944

Q. I show you a tariff which has been offered in evidence, being I. C. C. S. No. 459, of the Pennsylvania Railroad Company, in connection with the New York Central, Boston & Albany and Rutland, from Olean, New York, to points on those railroads, and ask you if you have seen that tariff before.—A. Not this identical copy, but I have seen the same tariff; yes, sir.

Q. The tariff referred to is petitioner's Exhibit 619; and I also show you defendants' Exhibit 114B, being percentage sheet No. 39 of the Pennsylvania Railroad Company. Please to look at that, with the tariff to which I refer, and referring to the points, Olean as a point of shipment and Norwood, New York, as the point of destination, state whether or not that tariff makes a rate from Olean to Norwood, and if so, by what route.

Mr. KELLOGG. That is objected to, as the tariff is the best evidence; and it is stipulated, I believe, that all testimony on this subject may be taken subject to the same objection.

Mr. MILLER. Yes, sir.

A. The tariff and percentage sheet name a rate on petroleum and petroleum products in carloads, from Olean to Norwood via East Buffalo, New York.

Q. And Suspension Bridge?—A. Suspension Bridge is not shown as a part of the route in this percentage sheet, but it was shown as a part of the route in the corresponding percentage sheet, issued by the Rome, Watertown & Ogdensburg Railroad.

10945 Q. The Rome, Watertown & Ogdensburg is a division or a leased line of the New York Central?—A. It is a leased line of the New York Central, and is now operated at the present moment and since October 1st of this year—it is now known at two operating divisions of the New York Central Railroad, the Ontario and St. Lawrence divisions; but prior to October 1st and for some years it was known as the R. W. & O. division.

Q. Does that tariff name or make a rate on petroleum and its products by a route running from Olean to Rochester over the Pennsylvania Railroad, or the Western New York & Pennsylvania, and thence over the Rome, Watertown & Ogdensburg division to Norwood?—A. No, sir.

Q. Does it name or make a rate over any other route than from Olean to Buffalo or East Buffalo and thence over the Rome, Watertown & Ogdensburg Railroad via Suspension Bridge to Norwood?—A. No, sir.

Q. You are positive about that, are you, Mr. Kallman?—A. Yes, sir.

Q. Then, if a shipper routed a shipment from Olean, made a shipment over the Western New York & Pennsylvania from Olean, New York, to Rochester, the shipment being destined to Norwood and beyond, or to Norwood, for that matter, would the railroads take the shipment and apply that tariff to it?—A. Not this tariff, not this 26½-cent rate; no, sir.

Q. From your experience about which you testified, prior, say, to October 1, 1905, on shipments from Olean to Rochester over the Western New York & Pennsylvania and thence over the

10946 Rome, Watertown & Ogdensburg division to Norwood, or to Norwood destined to points beyond, if this tariff would not apply as you say—you said this tariff would not apply——A. No, sir.

Q. ——what rates were applicable to that transportation?—A. The individual rates of the several carriers concerned.

Q. Then if the Western New York & Pennsylvania, or the Pennsylvania Railroad, had a rate from Olean to Rochester, and the New York Central, or Rome, Watertown & Ogdensburg division had a rate from Rochester to Norwood, and the Rutland Railroad had a rate from Norwood, say, to Burlington, Vermont, on shipments from Olean over that route destined to Burlington, would those rates apply that I have referred to there?

Mr. KELLOGG. One moment. The tariffs are the best evidence of what rates would apply, and this is secondary evidence and I object to it.

A. There being no joint rate, those would be the rates that would apply.

Q. Now, assume that that rate, namely, the Western New York & Pennsylvania, or the Pennsylvania rate from Olean to Rochester was set down in what is known as a local State tariff, unfiled with the Interstate Commerce Commission, and the New York Central rate from Rochester to Norwood was set down upon one of its tariffs known as a State tariff, and one that was not filed with the Interstate Commerce Commission, according to the practice of the railroads prior to October 1, 1905, would those rates be used in that transportation?

10947 Mr. KELLOGG. Same objection.

A. They would.

Q. Was that according to the general or universal practice of the railroads at that time?—A. It was.

Mr. KELLOGG. I suppose it is agreed that all this testimony may be taken subject to the same objection?

Mr. MILLER. Yes, sir.

Q. You are familiar with the rate over the New York Central, Rome, Watertown & Ogdensburg division, on petroleum and its products from Rochester to Norwood?—A. During what period, sir?

Q. Prior to October 1, 1905.—A. For several years prior to it, yes, sir; within my experience with the company.

Q. I think it has been testified here that that rate was a rate of 9 cents per 100 pounds?—A. There was such a rate, yes, sir, for some years.

Q. And that applied on this traffic?—A. Yes, sir.

Q. From Olean via Rochester to Norwood and to points beyond?—A. Yes, sir.

Q. Over the Rutland road into Vermont?—A. Yes.

Q. Was that rate a secret rate?—A. No, sir.

Q. Was that rate applicable on all traffic of its kind covered by the tariff for all shippers?—A. Yes, sir.

Mr. KELLOGG. The tariff is the best evidence of that. That is objected to.

Mr. MILLER. Well, this witness is better evidence than Mr. Kellogg is. He has been free to testify to that great tribunal, made up of the newspaper fraternity, attending here. I want this witness's judgment on that.

10948 Mr. KELLOGG. Well, we will see. Go ahead.

Mr. MILLER. Very well.

Q. In stating that the tariff shown you there, the joint tariff of the Pennsylvania Railroad and the New York Central, naming a rate of 26½ cents, was applicable only via the route you stated, namely, Olean via East Buffalo and Suspension Bridge over the Rome, Watertown & Ogdensburg Railroad, will you point out in the tariff or in the

division sheet what it is that demonstrates that fact?—A. The tariff on its title-page contains the following clause: "Route in accordance with agreed percentages, and as designated within." There being no designation of route within the tariff from Olean to Norwood, reference must be had to the division sheet or percentage sheet No. 39, which shows that Olean is a station on the Pennsylvania Railroad, taking route group No. 8. It also shows that Norwood is a station on the R., W. & O. division of the New York Central, taking route group G. The route table shown on the second page shows that traffic between Pennsylvania Railroad route group 8 and New York Central route group G routes via East Buffalo, and those instructions would govern agents in the routing of the traffic.

Q. There has been offered in evidence, Mr. Kallman, on behalf of the Government here, certain correspondence between one T. B. Westgate, of the American Oil Works (Limited), of Titusville, Pennsylvania, with Mr. Francis La Bau, assistant traffic manager of the New York Central Railroad, the correspondence being between the latter part of 1904 and the early part of 1905, as I recollect it.

10949 Did you have anything to do with the subject-matter of that correspondence?—A. I did.

Q. And what did you have to do with it?—A. The correspondence was referred to me for the purpose of considering the establishment of joint rates from the Titusville oil district, and particularly Titusville, and other oil districts in connection with it, to points on our lines including points on what was then a separate property, the New York & Ottawa Railway. The correspondence culminated in the establishment of joint rates from all of the oil districts to points on the New York & Ottawa Railway, as well as to bring about a revision of rates from all of the oil districts to points on the New York Central Railroad.

Q. In connection with the work that Mr. La Bau imposed on you or requested you to take up, did you investigate the subject, and was the result of your investigation the establishing of such joint rates?—A. Yes, sir.

Q. Do you know when those joint rates were put in force?—A. As to the New York & Ottawa Railway?

Q. Yes.—A. My recollection is, late in 1906.

Q. The New York & Ottawa, you say, was an independent line at that time?—A. At the time that correspondence was had it was, but shortly thereafter it was acquired by the New York Central Railroad.

Q. And since its acquisition by the New York Central it has been a part of the New York Central system of railroads?—A. Yes, sir.

Q. The New York & Ottawa runs from Tupper Lake Junction, up in the Adirondacks, northerly into Canada?—A. There

10950 are two corporations. The New York & Ottawa Railway runs from Tupper Lake, in the Adirondack Mountains to a place called Nyando, which is on the St. Lawrence River. There is another Canadian corporation which runs from Cornwall, Ontario,

to Ottawa. The two companies form a through line from Tupper Lake to Ottawa.

Q. Nyando is on the American side?—A. Yes, sir.

Q. And there is a bridge over the St. Lawrence there?—A. There is.

Q. Connecting that point with Cornwall?—A. Yes, sir; a separate corporation.

Q. And then the Canadian extension or line runs from Cornwall to Ottawa?—A. Yes, sir.

Q. Now, at the time you took up that subject-matter of this correspondence between Westgate and La Bau, what did you find the condition of the rates referred to there, whether they were consistent and systematic, or whether there was more or less confusion, conflict, or chaos in the rates to which you have referred, before you took up your work?—A. The rates were not on any consistent or uniform basis as between the several oil-producing districts, nor as between the different carriers operating from each district to points on our lines; and as a result of a very extensive investigation, we requested all carriers operating from the various oil-producing districts to points on our lines to correct their tariffs and bring about a uniform and consistent basis of rates on petroleum products to points on our lines.

10951 Q. Now, referring to the territory into which that traffic went, it was territory in northern New York, was it?—A. No, sir; the revision of rates covered all points on the New York Central Railroad and the West Shore Railroad—all divisions.

Q. And your work was to harmonize and make a consistent and systematic result of the tariff situation with respect to these different points?—A. Yes, sir.

Q. And did you do so?—A. Yes, sir.

Q. At that time, Mr. Kallman, when you took up that work, according to your experience what was the fact generally with respect to the tariff situation as between similar points or over similar lines? Were the tariffs of the railroads then complete and systematic as a rule? I do not mean now on main lines, between the large centers, but as they radiated out into the smaller places.—A. Speaking generally, I should say no, they were not.

Q. The fact is that since that time and particularly during the last two years the subject of the solution of that question has been one that has occupied the traffic departments of railroads very greatly, has it not?—A. Yes, sir.

Q. The traffic departments of railroads during the last two or three years, or two years, say, have been overwhelmed with that subject of systematizing and making more perfect tariffs?—A. Yes; and complying with regulations of railroad commissions.

Q. It is sometimes difficult to comply with the directions of railroad commissions——A. It is.

Q. ——and the Interstate Commerce Commission at the same time. I have a memorandum here that, as the result of your investigation, you wrote a letter to Mr. Anspach of the Lake Shore &

10952 Michigan Southern Railroad. Have you that letter?—A. I do not know that I have. I will see.

Q. The date I have mentioned is March 15, 1905. I ask you whether that was a portion of your work?—A. March 15, 1905, you are speaking of?

Q. Yes.—A. Yes, sir, I have a copy of that letter here.

Q. Is that correspondence a portion of your work, of which you testified, in the cleaning up of that matter?—A. Yes, sir; this letter and the accompanying statements embodied a complete revision of the petroleum tariffs of the Lake Shore & Michigan Southern Railway, applying to points on the New York Central and West Shore railroads.

Q. You wrote that letter, did you, to Mr. Anspach?—A. I did.

Q. May I see that?—A. [Producing letter and handing it to Mr. Miller.] That is a copy of it.

Q. This was signed by you?—A. Yes, sir, the original of it.

Mr. MILLER. I offer this in evidence.

Mr. KELLOGG. That is objected to as incompetent and immaterial.

Mr. MILLER. You do not object on the ground that it is a copy?

Mr. KELLOGG. No; not if he swears that the original was signed.

(Letter marked defendants' Exhibit 197.)

Q. That is the fact, that the original letter was signed and sent by you?—A. The original letter was signed by me and sent to Mr. Anspach.

Q. What was his position?—A. Chief of the tariff bureau

10953 of the Lake Shore & Michigan Southern Railway.

Q. Was the investigation which you made a thorough one?—A. It was.

Q. According to that investigation, had there been, prior to that time, a correlation of tariffs and rates and the working of them out consistently into a harmonious and consistent system of rate making, from these different points to the different destinations?—A. No, sir.

Q. What was the condition, and how had it been brought about?—A. Prior to January 1, 1907, there had not been any general basis for making rates on petroleum traffic in the territory east of the Mississippi and north of the Ohio rivers, what is known as the official classification territory. The rates on that traffic therefore became the result of growth, evolution; competitive conditions as between the oil-producing districts and pipe lines, and competitive conditions as between carriers, and that is perhaps the only explanation that I can offer as to the incongruity and inconsistency of the rates.

Q. They had been made piecemeal, one rate here and another rate there, without any attempt to systematize or harmonize them?—A. That is true, sir.

Q. And they were incongruous, then, were they?—A. They were.

Q. And your work was to correct that?—A. As far as practicable; yes, sir.

Q. Well, that work and that effort have been general since the passage of the Hepburn Act, in the railroad field, haven't they, to do that as far as possible?—A. Yes, sir.

10954 Q. As a result of that legislation?—A. I would not say as a result of that legislation; as a result of the ascertainment by the carriers of the condition of the rates.

Q. Now, according to your investigation which you made, and to the knowledge that you have, did the Standard Oil Company have anything to do with that incongruity, or bringing it about, or with the conditions of the rates?—A. By solicitation or suggestion to the carriers or conference with the carriers?

Q. Yes.—A. No, sir; not to my knowledge.

Q. In your investigation did you look into the origin of rates, as far as you could find it?—A. Yes, sir.

Q. From the files and papers of your system of railroads?—A. Yes, sir.

Q. Did you find any indication whatever that the Standard Oil Company had anything to do, for instance, with the establishment or bringing about of the rates that you found existing from western Pennsylvania and Ohio points into this territory up here that you mentioned?

Mr. KELLOGG. One moment.

WITNESS. I did not.

Mr. KELLOGG. One moment. Just wait a minute. That is objected to. If the witness knows anything about it of his own knowledge, he may testify, but what he found out from other people is not evidence.

Mr. MILLER. Well, I ask him both from his knowledge and as a result of this thorough investigation that he made.

10955 Mr. KELLOGG. Same objection.

A. I have no knowledge of it, nor can I find anything in the records of the company to that effect.

Q. Did you communicate, in like manner as with Mr. Anspach, with any other of the New York Central connections?

Mr. KELLOGG. Same objection.

A. At that time, or at or about March 15, 1905, I communicated with the representatives of every carrier having in effect tariffs applying upon petroleum traffic to points on our lines, requesting them to make the corrections in their rates that would bring about the uniformity that we had desired.

Q. Was the condition of incongruity that you found there, according to your experience and investigation, such as under or by reason of the way in which traffic had been previously conducted to your knowledge, would naturally result?—A. It was.

Q. Was it confined to oil?—A. No, sir.

Q. It applied to other commodities?—A. Yes, sir.

Q. And was true generally, was it?—A. Well, "generally" is rather a broad statement. It was true to a considerable extent.

Q. When did the Rome, Watertown & Ogdensburg Railroad become a division or connected with the New York Central?—A. The Rome, Watertown & Ogdensburg Railroad was acquired by the New York Central Railroad Company in 1890 or 1891.

Q. Now, when it became a part of the New York Central system, what was the fact with respect to the harmonious conduct of that line as a branch of the New York Central, or as to whether it was
10956 operated to some extent as an independent line on the subject of tariff making?—A. For some years after 1891 it was operated as a leased property, with a separate organization of officers and employees, and separate accounts were kept. Gradually the property became absorbed in its operation by the New York Central, until, I should say, about 1899 or 1900 a complete control was taken, and the keeping of separate accounts was abolished, and the property then became an operating division of the New York Central Railroad.

Q. In your investigation what did you find with respect to harmony or incongruity of the tariffs on that line with the other main lines of the New York Central?—A. The traffic of the Rome, Watertown & Ogdensburg Railroad was in charge of a general freight agent or general traffic agent for about seven or eight years from 1891 on. Separate offices were maintained, separate tariffs were kept, separate records were kept; so that, by that separate conduct of that traffic, as apart from the New York Central traffic, it naturally followed that there was not as complete consistency and harmony in the rates or the traffic arrangements as there would have been under one control.

Q. When did the Rutland Railroad become a portion of the New York Central lines?—A. I believe in 1905; early in 1905 or late in 1904, I am not clear.

Q. Prior to that time how was it?—A. That was entirely a separate property.

Q. And was itself made up—the Rutland Railroad—of the consolidation of distinct and theretofore independent properties?—A. It was.

10957 Q. Do you remember what they were?—A. The Rutland Railroad, as reorganized, I believe, in 1901 or 1900, took in the Bennington & Rutland Railroad, which extended from a place called White Creek, north of Troy, and from Bennington, Vermont, to Rutland, Vermont. It also took in the Ogdensburg & Lake Champlain division of the Central Vermont Railroad, extending from Rouses Point to Ogdensburg and Norwood, New York. It also took in the original line of the Rutland Railroad, from Rutland to Burlington, and there was an extension of the railroad built across the northern end of Lake Champlain, completing a through line from Bellows Falls, Vermont, or White Creek, New York, to Ogdensburg, Vermont, via Alburg, Vermont.

Q. Did you find out whether there were petroleum rates on traffic from western points, other than over this route of the Rome, Water-

town & Ogdensburg, to points on the Bennington & Rutland Railroad?—A. Yes, sir; there were, via a different route.

Q. How was that—what route?—A. The route was via the West Shore Railroad from East Buffalo to Rotterdam Junction, New York; thence via the Pittsburg Railroad originally, and after that road passed into the control of the Boston & Maine Railroad, by the Boston & Maine Railroad from Rotterdam Junction to White Creek; thence via the Bennington & Rutland Railroad at first, and latterly by the Rutland Railroad, from White Creek to Bellows Falls and Rutland, Vermont, but not to points north of Rutland.

Q. Those rates were made prior to any rates to those points
10958 via Norwood?—A. Oh, yes; sir.

Q. Prior to the absorption of the Rutland Railroad by the New York Central system any traffic by way of Norwood would be over the New York Central or the Rome, Watertown & Ogdensburg Railroad to Norwood; thence over an independent line, or two or three independent lines, the Ogdensburg & Lake Champlain, the Rutland, and the Bennington & Rutland, by way of that into Vermont?—A. Yes, sir.

Q. Did you find as to whether there had been any systematic taking up and solution of the question of through rates prior to your doing so, if you did, or establishing a basis of rates into northern Vermont territory?—A. No, sir.

Q. There was not?—A. Not that I am aware of or could find from our records.

Q. And these rates that you found in force by the southern route, Rotterdam Junction, went no further north than Rutland?—A. No, sir.

Q. Now, what was the fact with respect to your roads pro rating to Canadian points?—A. The Canadian carriers refused to pro rate on petroleum traffic.

Q. And as yet have you any pro rating arrangements with the Canadian railroads as to that traffic?—A. No, sir; there were, but there are not now.

Q. And that is not the result of the refusal of your road to pro rate?—A. No, sir.

Q. But is the result of what?—A. The result of the refusal of the Canadian roads to pro rate.

10959 Q. Has the New York Central refused at any time to pro-rate with those roads on petroleum traffic?—A. Not to my knowledge.

Q. Prior to your taking up this matter, as you have spoken about, at the request of Mr. La Bau, in your investigations, did you find that the subject-matter of the incongruity of rates up into that territory had been very much agitated?—A. No, sir.

Q. What sort of a territory is that?—A. May I ask you to refer more particularly.

Q. Well, northern New York and northern Vermont, as to population and trade?—A. It is sparsely settled—only a few large towns.

Q. Is the traffic small, comparatively?—A. The inbound traffic, yes. The outbound traffic is larger than the inbound.

Q. My associate suggests that I ask you whether the men who on your road were familiar or would have been familiar with the making of rates prior to the time when you took it up, and at the time this incongruity of rates grew up, were available, or whether they had passed away?—A. They are all dead.

Q. Who were they?—A. The officers who were more immediately in charge of the petroleum traffic were Samuel Goodman, assistant general freight agent, and latterly assistant freight traffic manager; George C. Terry, assistant general freight agent; and the other officers were Nathan Guilford, at first traffic manager and latterly vice-president, and F. L. Pomeroy, freight traffic manager. They are all deceased.

10960 Q. Was this investigation and work that you took up in looking into this subject of these rates, before or after the institution of the investigation of the subject by the Bureau of Corporations of the United States?—A. Before. In fact, I took it up independently in 1903.

Q. Then it was not brought about by the activity of the Bureau of Corporations in the investigation of this subject?—A. Not the adjustment that we made; no, sir.

Q. Have you the Rome, Watertown & Ogdensburg percentage sheet, I think it is No. 31?—A. Yes, sir.

Q. Is that the percentage sheet to which you referred when you said the Rome, Watertown & Ogdensburg percentage sheet routed the traffic to which that 26½-cent tariff from Olean to Rochester applied, routed that traffic via Suspension Bridge?—A. You said Olean to Rochester.

Q. I mean Olean to Norwood?—A. Yes, sir; this percentage sheet applied to the 26½-cent rate from Olean to Norwood.

Q. The tariff that I asked you about?—A. Yes, sir.

Q. And that is the percentage sheet to which you referred in stating that it routed it via Suspension Bridge?—A. Both of them routed—this one routed it via Suspension Bridge and East Buffalo. The Pennsylvania Railroad sheet routed it via Buffalo—East Buffalo.

Mr. MILLER. I offer that in evidence.

WITNESS. That is my only copy, sir. I would rather you——

Mr. MILLER. Well, counsel will let us put a copy in, I think.

WITNESS. If you will permit us, we will have a copy made for you.

10961 Mr. MILLER. Or I will put in just so much of it as shows the fact that we want to show, unless the Government wants it all in.

Mr. KELLOGG. Let me ask a question in regard to this. Perhaps we can get along without putting it in.

Mr. MILLER. Very well.

By Mr. KELLOGG:

Q. This sheet is dated, I see, in 1894?—A. Yes, sir; that was in effect until April 5, 1904.

Q. Then what change was made?—A. No change except dropping Suspension Bridge as being superfluous. The route still remained in the new issue, via East Buffalo.

Mr. MILLER. That meant via Suspension Bridge, did it, on the Rome, Watertown & Ogdensburg?

WITNESS. Yes, sir.

Q. By East Buffalo means via what route?—A. East Buffalo and Suspension Bridge.

Q. Why does it?—A. It is so provided for.

Q. Well, it is in this one, but not in the later one?—A. No, sir; it is not provided specifically. Suspension Bridge was omitted in the later one.

Q. The New York Central had two routes from East Buffalo to Norwood, hadn't it, one running through Rochester and the other running along the Lake Shore?—A. There are half a dozen routes from East Buffalo to Norwood.

Q. Some of them go through Rochester, don't they?—A. Some of them do.

10962 Q. So that under this division sheet, although it accepted the traffic from the Pennsylvania at East Buffalo, it could carry the traffic through Rochester to Norwood?—A. Not under that division sheet.

Q. Why not?—A. It calls for routing via Suspension Bridge.

Q. Well, does not the New York Central line run to Suspension Bridge?—A. Yes, sir.

Q. Doesn't it also run to Rochester?—A. Yes, sir.

Q. Doesn't it run directly from Rochester to Suspension Bridge?—A. It does; one division.

Q. Well, then, why couldn't it go that way?—A. It could go, I said, any way of six routes.

Q. Then it could go to Rochester?—A. I say that traffic can physically go, but by that division sheet traffic so routed would go from Buffalo to Suspension Bridge and thence over the Rome, Watertown & Ogdensburg division.

Q. Why would it?—A. Because it calls for that routing.

Q. It says "Route via East Buffalo and Suspension Bridge.—A. It does.

Q. Now, you have a line from East Buffalo through Suspension Bridge to Rochester and up to Norwood, haven't you?—A. Yes; but do you wish to imply that an agent would route the traffic from Buffalo to Rochester, 70 miles, and then have it sent back from Rochester to Suspension Bridge, 70 more miles, to get by Suspension Bridge?

Q. That is what I am asking you.—A. Why, no; if you will pardon me, that is rather——

Q. It is 70 miles from East Buffalo to Rochester, is it?—A.
10963 It is 70 miles from Buffalo to Rochester; about 68 miles from East Buffalo.

Q. Very well. Now, if the traffic was routed by the Pennsylvania from Olean to East Buffalo, it would deliver to the New York Central there, wouldn't it?—A. Yes, sir.

Q. Now, the New York Central's direct line is from there to Rochester, and Rochester to Norwood, isn't it?—A. What do you mean by "direct line?"

Q. Well, it has a direct line from East Buffalo to Rochester, hasn't it?—A. It has.

Q. And another line from Rochester to Norwood?—A. No.

Q. Why hasn't it?—A. The line from Rochester to Norwood consists of several links.

Q. Well, but it all belongs to the New York Central?—A. Yes; but it is no more direct than the line via Suspension Bridge.

Q. It is just as direct, isn't it?—A. Perhaps; yes.

Q. It is the shortest route from East Buffalo to Norwood to go through Rochester, isn't it?—A. That is true.

Q. Then the route named in this tariff, to go via East Buffalo to Norwood, would go by the shortest route through Rochester, wouldn't it?—A. No; it would not anything of the kind.

Q. Why wouldn't it?—A. Because the routing under that division sheet would require the agent to route it via Suspension Bridge, and it would go from East Buffalo to Suspension Bridge, 26 miles, where it would take the Rome, Watertown & Ogdensburg rails and go from there on to Norwood.

10964 Q. Then this division sheet, under the Pennsylvania tariff, required you to route this the longest possible way that the New York Central could send it, didn't it?—A. That was not the longest possible way.

Q. Which way could it send it any longer?—A. It could send it by Utica, would be longer.

Q. It would? How much?—A. I have not got the mileage in my mind.

Mr. KELLOGG. You need not go to the trouble of putting this in unless you want to.

WITNESS. It is the only copy I have. I should like to retain it, if you please. We may need it for other purposes.

Mr. MILLER. Then I will not encumber the record with this division sheet.

Q. This division sheet that you are talking about was not filed with the Interstate Commerce Commission?—A. Why, division sheets are not filed with the Commission.

Mr. KELLOGG. That is what I thought.

10965 By Mr. MILLER:

Q. Did it make any difference with the percentages that your road got that the traffic went by one route or by another route?—

A. It did. We got more via Suspension Bridge than via the other route.

Q. You got more by the routing of this traffic via Suspension Bridge and over the Rome, Watertown & Ogdensburg than you would by any other route?—A. We did; yes, sir.

Q. According to your practice?—A. Yes, sir.

Q. To revert for a moment to the answer you made to Mr. Kellogg that you had more routes, I ask you this question: If the 26½-cent tariff to which you refer were available or applicable on any other route than via the Rome, Watertown & Ogdensburg and Suspension Bridge (you state the percentage sheet limited it), how many other routes did you have?—A. We have six or more physical lines or routes; East Buffalo or Buffalo to Norwood. We have one route from Buffalo to Suspension Bridge and then direct R., W. & O. division to Norwood. We have another route over the main line of the New York Central from East Buffalo to Rochester, thence to Charlotte over a branch of the main line, thence from Charlotte over the R., W. & O. to Norwood; that is two. We have another route from East Buffalo to Lockport, thence over the Niagara Falls branch to Rochester, then over the Charlotte branch, then over the R., W. & O. We have another route over the main line to Syracuse, thence over the Oswego branch to Oswego, or over the Richland line to Richland. We have another route from East Buffalo to
10966 Rome, thence over the R., W. & O. We have another route from East Buffalo to Utica, thence over the R., W. & O. You could add some more combinations to those routes if you wanted to haul the traffic circuitously.

Q. Did you also have other routes in connection with Buffalo and East Buffalo, other connections with the Western New York & Pennsylvania or the Pennsylvania Railroad?—A. With the Pennsylvania Railroad; yes, sir.

Q. One by way of Clearfield?—A. We have several. We have a number of junctions with the Pennsylvania Railroad. We have at East Buffalo, at Rochester, at Genesee Junction, south of Rochester, Canandaigua, at Newark, at Himrods, at Williamsport or Newbury Junction, Lockhaven, Clearfield, Patton, Keating Summit, at Jersey City, and New York.

Q. So that if that tariff were available over the Western New York & Pennsylvania or Pennsylvania Railroad to a junction with your road, any junction of your road, and then over any line of your road there would be a very great many routes to which it could be available?—A. If it were so available; yes, sir.

Q. What was the practice in making up tariffs during the time that this tariff was in force as to making tariffs applicable either by their terms or by the terms of the division sheets, between joint railroads, of fixing them over a particular route or making them only applicable to the particular route?—A. There was no uniformity. Most tariffs on their face, or nowhere in them, contained any provision for routing. Therefore the agent was left to his only other re-

source, the percentage or division sheet. Some tariffs did provide specifically for the routing. Many tariffs, however, pro-
10967 vided for the route as per agreed divisions upon the theory that the rates and divisions of rates might change.

Q. Was it common to do that in confining a rate to a particular route?—A. It was; in fact, they are all confined to particular routes where they are joint rates.

Q. With respect to the Rome, Watertown & Ogdensburg Railroad, were its earnings treated as the earnings of a separate road, or was certain traffic thrown to it by certain routes and tariffs made accordingly?

Mr. KELLOGG. During what period?

Mr. MILLER. This period.

A. The Rome, Watertown & Ogdensburg Railroad, if I recall correctly, was either bankrupt or pretty nearly so at the time the New York Central Railroad took it over. For some years afterward it was operated separately to ascertain what the results of operation would be under a more economical administration. About 1898 or 1899 its separate operation and separate accounts were discontinued.

Mr. KELLOGG. Since then it has been all one?

WITNESS. Since about 1898 or 1899, I believe, or 1900, or thereabouts.

Q. I show you defendants' Exhibit 124A, a tariff of the
10968 Grand Trunk Railway System I. C. C. No. A944, and ask you to examine it. I call your attention to the fact that it is a tariff of the Grand Trunk and the Detroit & Toledo Shore Line Railroad in connection with certain other roads named thereon and connections as specified in the following agents' guides and building lists, under which, among others listed of these agents' guides and billing lists, is that of the National Despatch-Great Eastern Line, this tariff being effective December 12, 1904. I also show you the National Despatch-Great Eastern Line, Shippers' and Agents' Guide No. 9, which was effective January 1, 1903, a date prior to the making of the tariff. You may assume that this agents' guide was in effect at the time when the tariff was made. I also call your attention to a paragraph in this guide which states, on page numbered 1: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested," and ask you whether that tariff or that guide makes a rate on petroleum and its products from Toledo, Ohio, to Burlington, Vermont.

Mr. KELLOGG. That is objected to as incompetent and immaterial. The tariff is the best evidence of the rate.

A. The tariff in connection with the billing instructions book does name a rate of 27 cents per 100 pounds on petroleum and its products, in carloads, from Toledo, Ohio, to Burlington, Vermont.

Q. I show you petitioner's Exhibit 612 and petitioner's Exhibit

10969 613A, B, C, D, and E, which name a rate on oil, carloads, from Rochester to Norwood of 9 cents, and rates to other points, and which contain the notation "Not to be posted." I ask you what is the significance of that statement, "Not to be posted," upon these rate sheets and others, if put on others.—A. In contradistinction from the term "To be posted," which is shown on tariffs that were supposed to be posted but were not.

Q. The tariffs that contained the term "To be posted" were what sort of tariffs?—A. They were known as interstate tariffs.

Q. That is, tariffs that covered transportation from one State to another?—A. Yes, sir.

Q. You say they were not as a matter of fact posted?—A. Yes, sir.

Q. What was done with the tariffs that were marked "To be posted," of the interstate tariffs?—A. When the interstate commerce law was enacted, in 1887, it contained a provision which was substantially the same as the present provision, that tariffs should be posted, to wit, hung up on the walls of stations on hooks or other contrivances, where the public could go and examine them for themselves. The carriers undertook to comply with that provision at the outset, but finding that it was simply impossible to keep anything like a file of tariffs exposed to the public view, where they would be destroyed by malicious persons or vandals or taken away, they abandoned it, and agents were furnished with the tariffs and instructed to exhibit them to shippers, and after some years that practice was substan-
10970 tially recognized by the Interstate Commerce Commission and to-day it is officially recognized that the physical posting of tariffs is not required; that agents' files of tariffs are open to inspection to the public in fact, and the public is notified of it by a placard exposed to public view. Nevertheless the pra'tice of the cariers continues——

Q. What is that placard?—A. It is a placard announcing, in substance, that complete files of the company's tariffs are on file with the agent and are open to public inspection; that the agent will exhibit them on application without requiring the assignment of any reason.

Q. And those notices do not confine that to interstate tariffs?—A. No, sir.

Q. All tariffs?—A. All tariffs now. Prior to the enactment of the several railroad State laws we did not post any placards as to intrastate tariffs in New York State prior to July 1, 1907.

Q. Were the placards you posted prior to that confined by their terms to the statement that all interstate tariffs——A. Oh, I think some were and some were not. There was no uniformity as to that. But answering your first question, carriers, or their clerks in charge of tariffs, simply pursued the method of printing on tariffs the words "To be posted" when in fact they were not. Intrastate tariffs contained the words "Not to be posted," merely continuing the practice of distinguishing between the tariff which was not to be posted and the tariff which was to be posted, for the information of the agent.

10971 Q. And the effect of that statement on the tariff, "Not to be posted," merely was that the tariff was one that covered transportation from one point in the State to another point in the same State?—A. Yes, sir.

Q. How with respect to tariffs kept by the agent, intrastate tariffs and the interstate tariffs, or those marked to be posted and those marked not to be posted?—A. There was no distinction as to that. They kept them in whatever facility they had for that purpose or whatever form their own convenience seemed to require.

Q. Were the interstate tariffs, or those marked to be posted, as so kept by the agent any more public or any more accessible to the public than the State tariffs?—A. No, sir.

Q. They were all kept by the agent in his office in the tariff files devoted to that purpose?—A. Yes, sir.

Q. And rates therefrom were shown or the tariffs shown to the shipper upon application?—A. Yes, sir; on application.

Q. And if any of the public asked for one, what was the method—passing out the bunch to him?—A. Oh, no; if he indicated what particular one he wanted to see it was shown to him. Passing out the bunch to him, he might abstract some of the agent's tariffs.

Q. I noticed certain initials on the bottom of those tariffs, the Government exhibits, that I just showed you. Do you know what they indicate; what they are?—A. Yes, sir; at the bottom?

Q. Yes. Read the first one.—A. This one (petitioner's Exhibit 612) is W. K. 201, of January 1, 1904. At the bottom are the following initials: "HDC 2 Agent, SK ASG HFW." That

10972 indicates that two copies were made for the assistant general freight agent's office, copies for the agents, copy for the division freight agent at Syracuse, the division freight agent at Malone, the division freight agent at Albany.

Q. And in the ordinary course of business copies were sent to those agents?—A. And officers: yes, sir.

Mr. KELLOGG. State what was done and not what——

WITNESS. Well, that was done.

Q. Will you explain the similar notices on the other rate sheets here?—A. This one of January 1, 1905 (petitioner's Exhibit 613A), being rate order W. L. 219, has the following notation at the bottom: "IHH 3 Agent AN" (should be WN) "ASG FLW" indicates that three copies were made for the assistant general freight agent, agents' copies, copies for the second assistant general freight agent, copy for the division freight agent at Malone, copy for the division freight agent at Watertown. Rate order W. L. 691 (petitioner's Exhibit 613B), of March 16, 1905, contains the same notation at the bottom and has the same indication. Rate order W. L. 851 (petitioner's Exhibit 613C) contains the same notation and has the same meaning as 613A. Petitioner's Exhibit 613D contains the following notation: "IHH 3 Agent AN FLW WSK." and means three copies for the second assistant general freight agent, agents, division freight agent, Watertown, and copy for myself. Petitioner's Exhibit 613E, of

May 11, 1906, rate order W. M. 638; notation: "IHH 3 Agent AN ASG FLW WSK," and has the same meaning as the previous one except that a copy was sent to the division freight agent, Malone, and a copy to the division freight agent, Watertown.

10973 Q. When you speak of agents' copies there, what do you mean? Referring to one of those quotations you said "agent."—A. Agent at the point from which the rate order applies. applies.

Q. One of the expressions you used was "agents."—A. That was an error; I should have said "agent."

Q. Now, these the the rate orders or tariffs of your road which the evidence of the Government tends to show were used in the transportation of petroleum and its products from Rochester, in connection with the Pennsylvania Railroad at Rochester, in connection with the Rutland Railroad at Norwood, and which my brother Kellogg frequently refers to as secret rates. Were those secret, Mr. Kallman?—A. No, sir.

Q. Were those tariffs any more secret than other tariffs in the hands of your agents at the same points?—A. No, sir.

Cross-examination by Mr. KELLOGG:

Q. Your company, the New York Central Railroad, was indicted for carrying oil on this 9-cent rate in interstate commerce, wasn't it?

Mr. MILLER. I object to that as incompetent, secondary, and as immaterial and irrelevant.

Mr. MARTYN. And as a misstatement of the facts.

A. No, sir; it was not indicted as you state, not according to my understanding.

Q. The New York Central Railroad was convicted in the United States court for carrying oil on that 9-cent rate and failing to file it with the Interstate Commerce Commission, wasn't it?

10974 Mr. MILLER. I object to that on the same ground.

A. No, sir.

Q. What was it convicted for?

Mr. MILLER. Same objection.

A. It was convicted because it failed to file a 9-cent rate from Rochester to Norwood.

Q. That was this 9-cent rate?—A. Yes, sir.

Q. And that it was using it in shipping oil to Vermont points?—A. I don't so understand it.

Q. Wasn't that part of the evidence?—A. That was part of the evidence, but it was not the basis of the conviction.

Q. Well, you didn't file it with the Interstate Commerce Commission?—A. We did not.

Q. You were convicted and fined $15,000, weren't you?—A. For not filing this schedule.

Mr. MILLER. Same objection.

Q. Were you a witness in that trial?—A. I was.

Mr. MILLER. Mr. Kellogg, the same objection may pertain to all this testimony?

Mr. KELLOGG. Yes.

Q. There is another indictment pending against your company for granting concessions to the Standard Oil Company less than the tariff rate?—A. I do not understand that allegation is in the indictment. The allegation in the indictment, as I understand it, is that we carried oil under the 9-cent rate.

Q. And while the published tariff rate was 26½ cents——A. I don't understand that that part of it is in the indictment.

10975 Q. One of those indictments is now pending?—A. Yes, sir; the latter.

Q. Now, you say this 9-cent rate (tariff) from Olean to Norwood, which was marked "Not to be posted," was not a secret rate?—A. I do.

Q. How many agents of the New York Central road had it?—A. The agent at Rochester.

Q. One agent at Rochester?—A. Yes, sir; for the reason that the tariff applied only from Rochester.

Q. I will show you that. The tariff only applied from Rochester to Norwood, did it?—A. No; it applied from Rochester to other stations.

Q. Rochester to Norwood and other stations?—A. Yes.

Q. In that vicinity?—A. Yes.

Q. The only refinery at Olean is a Standard Oil concern, isn't it?—A. I so understand it.

Q. The only one at Rochester is a Standard Oil concern?—A. Controlled by the Standard Oil Company, I so understand.

Q. Now, did the agent at Olean, of the Pennsylvania Railroad, have this 9-cent rate?—A. Certainly not.

Q. Did you tell the Pennsylvania that you had that 9-cent rate in?—A. I did not, and I don't know that anybody else connected with the New York Central Railroad did.

Q. Did you keep it from them?—A. I don't know that the question arose or anything came up about it. In the ordinary conduct of the business there would be no reason under the sun why we should notify the gent at Olean or anybody on the Pennsylvania Railroad what that rate was.

10976 Q. You also had a 12-cent rate on oil from Buffalo to Norwood which was not filed with the Interstate Commerce Commission, hadn't you?—A. Yes, sir.

Q. How long was that in effect?—A. Several years.

Q. A number of years prior to 1905?—A. I do not so remember. I say several years, perhaps, prior.

Q. What do you mean by several—three to ten?—A. Three or four. I never knew that "several" went up to ten.

Q. That rate was marked "Not to be posted," wasn't it?—A. It was.

Q. And was not filed with the Interstate Commerce Commission?—A. It was not.

Q. To what agent was that rate given?—A. To the East Buffalo billing agent.

Q. No other agent of the New York Central?—A. It might have been sent to the other agents in the city of Buffalo, but not outside of Buffalo.

Q. There are no refineries of the Standard Oil at Buffalo?—A. None that I know of.

Q. Now, take this 9-cent rate and that 12-cent rate. That was 12 cents, was it?—A. Yes; from Buffalo.

Q. Were these sent to any independent shippers of petroleum?—A. No, sir. We do not send tariffs to any shippers unless they ask for them.

Q. Did any of the independent shippers of petroleum know that any such tariff was in existence?—A. I have no means of knowing.

Q. The Standard Oil, then, is the only company that you know of that ever shipped any oil on this 9-cent rate?—
10977 A. That I know of, of my own personal knowledge; yes.

Q. And you never heard of any other shipper shipping any oil, did you?—A. I do not recall that; no.

Q. And no other shippers, so far as you know, ever knew of it?—A. So far as I personally know, no.

Mr. MILLER. You haven't any knowledge on the subject?

WITNESS. I haven't any knowledge on the subject.

Q. And it was not filed with the Interstate Commerce Commission?—A. No, sir; neither one of them.

Q. And it was only given to the freight agents of the New York Central and to the agent at Rochester?

Mr. MILLER. I object to that.

A. Yes, sir; and we pursued the same course there as we would with any other tariffs, state or interstate.

Q. And you call that not a secret tariff, do you?—A. I do.

Q. I am glad to get your definition of a secret tariff.—A. I have not given you any definition of a secret tariff. If you will explain what you mean by a secret tariff, then perhaps I will get my mind clear in answering.

Q. Did the New York Central make any shipments on this 12-cent rate from Buffalo to Norwood?—A. Yes, sir.

Q. How many years has it been making shipments on that rate?—A. I should say for several years, three or four years.

Q. For the Standard Oil Company?—A. Anybody who offered the oil.

Q. Did anybody but the Standard Oil offer any oil?—A. I
10978 have not any personal knowledge on the subject except to say that I do not know of my own knowledge that anybody else did.

Q. Did any of those shipments go to Vermont points?—A. They may have for all I know.

Q. Have you a record of them in your office?—A. We probably have.

Q. Will you please look up and give us a statement of any shipments made from Buffalo or East Buffalo or from the Standard Oil refinery at Buffalo, or in that neighborhood, to any northern New York points or to points in Vermont?

Mr. MILLER. On the 12-cent tariff?

Mr. KELLOGG. On the 12-cent tariff.

Mr. MILLER. I object to that as not cross-examination.

A. I would rather take that into consideration and consult my counsel as to the New York State part of it at least.

Q. Do you wish a written statement to take with you?—A. If you desire to press the request; yes, sir.

Q. Will you also look and see if you can find those tariffs prior to the one which is in evidence here?—A. Which one is in evidence?

Q. It is the one of September, 1905, that is in evidence.—A. May I see it?

Q. Yes. I show you petitioner's Exhibit 928.—A. Now, what is your question, please?

Q. Will you please produce the tariff preceding that tariff, petitioner's Exhibit 928?—A. And naming this 12-cent rate from Buffalo?

Q. Yes.—A. Yes, sir.

10979 Q. When did you take out this 12-cent rate?—A. I do not recall definitely, but my impression is it was in the early part of 1906.

Q. The early part of 1906? That was after the investigation of the Bureau of Corporations.—A. No; it was before the investigation of the Bureau of Corporations.

Q. Wasn't the Bureau of Corporations' investigation in 1905?—A. They may have been conducting it, but I am speaking of the time of their report.

Q. Oh, the report? You knew of the investigation before the report was made, didn't you?—A. Oh, we knew in a general way they were making investigation. They did not investigate anything so far as we were concerned at that time.

Q. Because you refused to let them, didn't you?—A. That is true.

Q. You wouldn't let them have access to your office?—A. To the intrastate records, records of the conduct of intrastate traffic.

Q. Did you give them access to any records?

Mr. MILLER. I object to this as immaterial.

A. We offered to give them access to interstate records.

Q. Didn't you say you would make up statements for them?—A. We did.

Q. But you did not give them access to make them up from your books, did you?—A. I am not clear as to that.

Q. That is, you interpreted this business going from Olean to Vermont on these tariffs as intrastate business and refused

10980 to allow them access, didn't you?

Mr. MILLER. I object to this as not cross-examination and as immaterial.

A. We interpreted the traffic delivered to us at Rochester and consigned to Vermont, to be carried under tariffs of our issue, Rochester to Norwood, there being no joint interstate tariffs in effect, to be intrastate.

Q. And you refused them access to the records?—A. That is true.

Q. Now, Mr. Kallman, is it not a fact that the resolution under which the Department of Commerce and Labor was proceeding was adopted in the beginning of 1905?—A. It may have been.

Mr. MILLER. I object to that as not cross-examination and as incompetent. I do not know how Mr. Kallman could know about the resolution of Congress. I should think the best way would be to offer the resolution.

Mr. KELLOGG. I do not want to cross-examine Mr. Kallman on anything that is not proper, but it seems to me when he testifies that he took up the subject of correcting these rates before the investigation of the Bureau of Corporations I am entitled to find out about it.

WITNESS. Mr. Kellogg, how could I have known what the result of the investigations was until the Garfield report was printed?

Q. I am not asking you the result; I am asking you if those rates were not taken out by you after the Bureau of Corporations commenced its investigations?—A. There was no investigation as to us; it was refused.

10981 Q. Well, you knew they were after you, didn't you? You found out?—A. We knew they were trying to get some information concerning the conduct of intrastate traffic which we at that time declined to give; but the changes in these rates were made a couple of months or several months before the Garfield report was issued.

Q. Oh, yes; but long after they made this demand on you?—A. Not so long after; no.

Q. Well, it was after?—A. During the interval, whatever it was.

Q. When did you first put this 9-cent a barrel rate in force?—A. You mean 9 cents a hundred?

Q. Nine cents a hundred; yes.—A. The earliest record I can find of it is 1891.

Q. Have you the rate orders?—A. No, sir.

Q. There are none of them in existence now?—A. No; but I believe in either the trial of the suit against our company or the Standard Oil Company the books containing the records of those rates were produced in evidence, and I am rather under the impression they are in the possession of the district attorney for the western district of New York.

Q. You were to find out how long the 12-cent rate was in effect?—A. Yes.

Q. How about that 12½-cent rate to those various points in northern New York on the R. W. & O. division, Oswego and East?—A. I could not say from recollection, but my impression is for a number of years.

Q. Well, how many years?—A. Ten or more, for that matter.

10982 Q. Ten or more?—A. I can not say definitely, but the same rate order, as I recall it, that contained the 9-cent rate contained the other, or the records did.

Q. How about this 20-cent rate to Fulton Chain, Clearwater, and other points?—A. I do not know how long that rate was in effect; I can not say from memory.

Q. Many years?—A. No; I think not. The Adirondack division of the New York Central Railway, or its predecessor, the Mohawk & Malone Railroad, was not open for many years—was not constructed.

Q. Will you give us the time when the rates named in these rate orders were first put in force and how long they have been in existence?—A. If we have the records in our possession, and they are not in the possession of the Government, we will do so. I believe they are in the possession of the Government to-day.

Q. We will find out about that. What is a bill of lading?—A. It is a receipt for property, and states the conditions under which it will be transported.

Mr. MILLER. I object to this as not cross-examination.

Q. It contains the name of the consignor, does it?—A. Usually.

Q. And the name of the consignee?—A. Yes.

Q. And the origin and destination of the freight?—A. Yes, sir.

Q. And it is usually given by the initial carrier, that is, the first carrier which takes the property?—A. As a rule.

10983 Q. And if it is a through interstate bill of lading it states the destination on some line in another State?

Mr. MILLER. This is evidence in chief for the Government and not cross-examination, and I object to it as leading. I think the witness ought to state without leading questions. Let him state the whole thing himself as to what it contains.

Mr. KELLOGG. He said they used these only as interstate shipments. I think I have a right to find out whether they did.

WITNESS. I do not recall stating that bills of lading are used only for interstate shipments.

Q. No, but you said as far as your road was concerned these shipments were intrastate shipments.—A. No, I didn't say that.

Q. They were interstate shipments?—A. I don't say that. I said we had a rate in effect from Rochester to Norwood which, in the absence of a joint through rate from a point in the State of New York to a point in the State of Vermont, was the only rate we could apply upon any shipment of freight offered to us at Rochester destined to or beyond Norwood.

Mr. MILLER. You had no other rate in existence?

WITNESS. No other rate.

Q. They were interstate shipments, then, were they?—A. It was traffic originating at a point in one State destined to a point in another.

Q. And consigned through by the shipper?—A. Consigned through, yes.

Q. And the billing that was given by the Pennsylvania road showed the destination as to every car that was shipped to
10984 Vermont as a Vermont point, did it not?

Mr. MILLER. That is objected to as incompetent. The bill of lading will show better than the witness. He has not seen it before.

[Mr. Kellogg handed a paper to the witness.]

WITNESS. The one you show me shows a shipment of gas oil consigned to R. H. Beaman, care Burlington Light and Power Company, destination Burlington, Vermont, routed Pennsylvania Railroad via Rochester, New York Central Railroad via Norwood, Rutland Railroad.

Q. You would call that a through bill of lading, would you?—A. I would not call it a through bill of lading. I would call it a bill of lading. I don't know of any distinction between a through bill of lading and a bill of lading.

Q. Well, it is a bill of lading of the oil from Olean to Burlington, is it?—A. Yes, sir; Olean to Burlington; a bill of lading for a shipment of freight received at Olean and consigned or destined to Burlington.

Q. Naming the New York Central and the Rutland as the intermediate carriers?—A. Yes, sir.

Q. So far as you know, were all of the shipments which were made from Olean to Burlington points during several years prior to 1906 made on the same kind of bill of lading, in the same way?

Mr. MILLER. Do you know anything about it?

A. I heard some testimony in the trial at Rochester, by the agents at Olean, and various similar bills of lading were produced. Whether all of the oil was so consigned I do not know, but
10985 as to those I heard testimony concerning they were generally consigned in that way.

Q. The only direction your company got was the transfer from the Pennsylvania road to your line and the direction for your agent to prepay the freight?—A. Yes, sir.

Q. You got no direction from the Standard Oil Company direct?—A. No, sir.

Q. And the tariff on which you shipped that freight was a tariff not filed with the Interstate Commerce Commission?—A. Yes, sir.

Q. And the same way with shipments that you made, if you did make any, from Buffalo; they were on that 12-cent rate?—A. Yes, sir; and any similar freight, whether petroleum or otherwise, under similar circumstances, would take similar rates.

Q. Now, did you have any other unpublished rates, or rates not filed with the Interstate Commerce Commission, on which the Standard Oil shipped oil out of Olean, Rochester or Buffalo?—A. I do not know. We had various rates between points in the State of New York. Whether the Standard Oil Company shipped under rates other than these I do not know.

Q. There are no other but Standard Oil refineries at your point of Rochester and Buffalo?—A. No; there are not.

Q. Did you have any other rates out of those towns?—A. Yes; you have them right there on that sheet before you, from Rochester.

Q. I am talking of others than on these sheets.—A. Yes; I guess there were; I know of some, several.

10986 Q. What were they?—A. Oh, I can't recall what they were, the figures. There were rates on petroleum and petroleum products from Buffalo and Rochester.

Q. To various points in New York?—A. Yes.

Q. That were not filed with the Interstate Commerce Commission?—A. Yes.

Q. Will you produce those?—A. I would rather consult counsel before I produce them. I have no desire to be disrespectful, but considering the present status of litigation against the company, in the case which is on appeal in the United States Circuit Court, I prefer to consult counsel before I produce those documents.

Q. I am perfectly willing you should do so. During the time that this 9 cents per hundredweight rate from Rochester to Norwood was in force and the 12 cents from Buffalo to Norwood was in force, you had a joint rate, which was filed with the Interstate Commerce Commission, of 26½ cents a hundred, from Olean to Norwood, had you not?—A. There was such a rate, in which we were shown as participating carriers.

Q. You joined in making that rate?—A. We did.

Q. I notice that one of these tariffs, the 26½-cent rate, was made effective April 10, 1904, the one that was shown you this morning.—A. Yes, sir.

Q. At that time what was your position with the New York Central road?—A. April 1, 1904?

Q. April 10, 1904.—A. Chief of tariff bureau.

Q. And your office was where?—A. Grand Central Station, New York City.

10987 Q. Were you consulted about that tariff?—A. No, sir.

Q. You were not?—A. That was merely a reissue.

Q. You have been a general freight agent or assistant general freight agent how long?—A. Assistant general freight agent since July 1, 1904.

Q. Who put this tariff in effect?—A. I would like to find out; it has been in effect so long.

Q. Who caused it to be republished April 10, 1904?—A. I assume E. T. Johnson, division freight agent of the Pennsylvania Railroad.

Q. Now, while this tariff was actually in force after 1904, you were carrying oil from Olean to Norwood, destined to points beyond, in connection with the Pennsylvania Railroad, for 11.8 cents per 100 pounds—you for 9 cents and they for 2.8, weren't you?—A. I would rather not answer your question in the form you state it. We were carrying oil from Rochester to Norwood at 9 cents per 100, but we didn't know, and I didn't know, what the Pennsylvania Railroad was carrying it for or charging from Olean to Rochester.

Q. And so far as you know they did not know anything about your road?—A. As far as I know, they did not.

Q. Did you think they were charging 17½ cents, so as to make it 26 cents?—A. I didn't give it a thought.

Q. You didn't?—A. I never gave it a thought, what they were charging.

Q. You knew there was some reason why there was a large traffic moving from Olean to Rochester and from Rochester to Nor-
10988 wood?—A. I personally did not know at that time that any oil was being shipped from Olean through Rochester to Burlington, Vermont.

Q. When did you find out?—A. Early in 1905.

Q. Did you ship during your time, since July, 1904, any oil from Olean to Norwood or any other point under that 26-cent rate?—A. I don't know of any such shipments.

Q. Do you know of any such shipments at any time since 1900?—A. There may have been as far back as 1900, but I should say not during 1904 and 1905. I doubt whether there were. I have no personal knowledge of it.

Q. I mean not simply to Norwood, but to all those places named in that tariff, whether there were any shipments.—A. I doubt it. I have no knowledge of it.

Q. You doubt it because you had unfiled tariffs for a great deal less, don't you?—A. No; that is not the reason.

Q. What is the reason?—A. This rate in itself, if applied to the transportation of petroleum in the last five or six years, would be a pretty high rate.

Q. It was the same rate, practically, that was in force from Bradford, wasn't it?—A. It was.

Q. Only 19 miles farther away?—A. Yes.

Q. Did you call that a high rate?—A. I did. In 1905 I voluntarily reduced the rate from 26½ cents; I reduced it about 8 cents, as I recall it.

Q. In 1906?—A. No; in 1905.

Q. The latter part of '05—A. No; the early part of 1905.

Q. To what point?—A. To all points on the New York Central Railroad.

Q. From Bradford, in the early part of 1905?—A. Yes, sir.

Q. Where is the tariff for it?—A. I haven't got it with me, but I will produce it. That letter of March 15, 1905, states what the rate was, if you will let me have it. I can give it to you from that letter.

Q. I want the tariff.—A. I will also produce the tariff if you desire.

(A recess was here taken until 2 o'clock p. m., when the cross-examination was resumed.)

10989 Q. You reduced the rate from Titusville to these northern New York points in March, 1905?—A. Yes, sir.

Q. Prior to that time shipments of oil from Olean into northern New York points were made, so far as your line was concerned, under

this tariff not filed with the Commission, were they not?—A. No; there were two tariffs. There was a tariff of 26½ cents via Buffalo, and there was no tariff via Rochester.

Q. Very well. From Rochester to northern New York points, I ask you if you did not ship the oil that came from Olean under this tariff not filed with the Commission?—A. You did not ask me that, sir.

Q. Well, did you?—A. We shipped from Rochester to Norwood. What oil moved from Rochester to Norwood moved under that 9-cent rate.

Q. Yes; and to stations on the R., W. & O. divisions, Oswego and East, moved under the 12½-cent rate?—A. While it was in effect; yes, sir.

Q. And to Malone, Saranac Lake, Partlow, and Beaver River for 15 cents?—A. While that rate was in effect.

Q. And Norwood and beyond, Norwood for Rutland points, 9 cents?—A. Yes, sir.

Q. And to Fulton Chain, Clearwater, Long Lake West, Piercefield, Tupper Lake Junction, Paul Smith's, and Constable, 20 cents?—A. While it was in effect; yes, sir.

Q. Now, these latter are all stations on the Adirondack division?—A. Not all of them.

Q. What are they on?—A. The stations on the Adirondack
10990 division in that tariff are Fulton Chain, Clearwater, Long Lake West, Piercefield, Tupper Lake Junction, Paul Smith's, Constable, Malone, Saranac Lake, Partlow, and Beaver River.

Q. Those were the latter ones I read, weren't they?—A. You read also R., W. & O. division stations.

Q. Now, to all those points you just read except Malone the rate from Titusville prior to March, 1905, was 33 cents, wasn't it?—A. I would rather have the tariff as to that or the letter.

Q. This tariff does not show it?—A. Well, the letter. The question is during that——

Q. What was the rate? What is your recollection of it?—A. If you will allow me to look at that letter, it may refresh my memory.

Q. Here it is [handing letter to witness].—A. According to this letter the tariff as then in effect from Titusville to the Adirondack division did not contain any rate whatever.

Q. You charged Mr. Westgate 33 cents a hundred, didn't you?

Mr. MILLER. I object to that.

A. I don't know. I would have to look at the tariff.

Q. Don't you know that Westgate was paying 33 cents per hundred prior to that date?—A. From Titusville to the Adirondack division prior to that date?

Q. Yes.—A. No, sir; I do not know it.

Q. You don't know it?—A. According to my letter here there was not any tariff or rate in effect from Titusville to the Adirondack division. He therefore paid the combination of local rates, whatever that was.

10991 Q. Was not 33 cents the third-class rate?—A. My recollection is that was not to the Rutland Railroad; 33 cents from Titusville.

Q. Well, the same as to those——A. No; it was not anything of the kind.

Q. What was it?—A. I don't know. There was no through rate to the Adirondack division. It was a combination of locals.

Q. Well, he paid 33 cents a hundred to your road?—A. I don't know.

Q. Now, under what tariff did he pay it?—A. From where to where?

Q. From Titusville to all those points that I named there except Malone?—A. I have not any knowledge of what he paid.

Q. You haven't any knowledge of it?—A. Produce his letter or the tariff.

Q. We produced the bills, and they are proven in this case. Do you deny that is true?—A. I don't deny it at all. I don't know what he paid.

Q. You don't know what he paid?—A. I say there was no joint tariff in effect from Titusville to the Adirondack division prior to March 15, 1905.

Q. Your road runs from Titusville, doesn't it? The New York Central controls the road from Titusville to these places, doesn't it?—A. The New York Central controls the Dunkirk, Allegheny Valley & Pittsburg Railroad.

Q. And that runs to Titusville?—A. That runs from Titusville.

Q. In connection with the New York Central?—A. No, sir; in connection with the Lake Shore & Michigan Southern, at Dunkirk.

10992 Q. The New York Central controls the Lake Shore & Michigan Southern, doesn't it?—A. It controls it by stock ownership, a majority stock ownership, I apprehend.

Q. Now, this Dunkirk & Allegheny Valley road connects with the Lake Shore at what place?—A. At Dunkirk.

Q. At Dunkirk, New York?—A. Yes, sir.

Q. And the Lake Shore connects with the New York Central?—A. At East Buffalo.

Q. So that over the rails controlled by the New York Central a shipment of oil would go from Titusville to these places named in northern New York?—A. Controlled, one part of it, indirectly; yes.

Q. What do you mean by "indirectly?"—A. The New York Central does not control the Lake Shore Railroad as it does the D., A. V. & P. The New York Central leases the D., A. V. & P.

Q. But the other it controls by stock ownership?—A. Substantial control, as I understand it.

Mr. MILLER. It is operated entirely separate.

WITNESS. Operated entirely separate, separate corporations.

Q. Do you mean to say that prior to March, 1905, the third-class rate from Titusville to these same places in northern New York on

the Adirondack division was not 33 cents a hundred, and that that was not charged to the American Oil Works?—A. I don't recall what the third-class rate was from Titusville to the Adirondack division, but if that was the third-class rate, oil could have been shipped under it from Titusville to those stations.

10993 Q. Was not that the only rate under which oil could be shipped prior to Mar. 1, 1905, from Titusville?—A. There was no carload rate on oil. Therefore oil was classified in less than carload lots at third-class. In the absence of a carload rate, if there was a class rate, whatever that third-class rate was, oil could be shipped under it unless there was some restriction to the contrary.

Q. There was a third-class rate, wasn't there?—A. I am not sure whether there was any restriction to that; but if the third-class rate was 33 cents, there being no restriction, it could have been shipped under it.

Q. Well, it was the third-class rate, wasn't it?—A. I don't know from memory. I will produce the tariff if you wish it.

Q. All right. It has been produced and proven by others.

Mr. MILLER. Has not the Government got the tariff in?

Mr. KELLOGG. Why, certainly.

Mr. MILLER. Why don't you produce it and show him the tariff?

Mr. KELLOGG. We have not brought the entire tariff files of the Interstate Commerce Commission here.

Mr. MILLER. No; but that is not the entire files.

Q. Now, during that very time, prior to March, 1905, shipments from Olean to Norwood, for instance, for points on the Rutland Railroad, took 9 cents a hundred on your line of road?—A. From Rochester to Norwood; yes, sir.

Q. And that same oil paid 2.8 cents on the Pennsylvania Railroad, from Olean to Rochester, didn't it?—A. So I have

10994 since learned.

Q. That would make 11.8 cents, wouldn't it?—A. Yes.

Q. As against 26½ cents from Titusville to Norwood, prior to March, 1905?—A. Yes; that is right.

Q. Now, you take Saranac Lake, Partlow, Beaver River from Olean in connection with the Pennsylvania road, the rate to those points would be 17.8 cents, wouldn't it?—A. Our rate would be 15 cents. Their rates being 2.8 cents, yes; the combination of rates would be 17.8 cents.

Q. As against 33 from Titusville?—A. Assuming that the 33-cent rate applied.

Mr. MILLER. Not over the same route?

WITNESS. Oh, no; different routes; entirely diffierent routes.

Q. New York Central lines, both of them, except to Olean?—A. Well, is not that a very essential difference?

Q. I don't know why, when their rate was 2.8 cents for a 106-mile haul.—A. We had no knowledge of what their rate was.

Q. Oh, no! To these other places on the Adirondack division your rate in connection with the Pennsylvania from Olean was 22.8, wasn't

it?—A. I do not care to answer it in that form. Our rate was 20 cents.

Q. Well, you know theirs was 2.8 cents, don't you?—A. I know now. I didn't know then.

Q. You know it now, don't you?—A. I know it only by testimony.

Mr. MILLER. Why ask the witness about that? You have proved it another way.

10995 Q. And the rate from Titusville was 33 cents, wasn't it?

Mr. MILLER. I object to this.

A. I don't know what the rate was from Titusville. I will ascertain from the tariffs and let you know if you wish.

Mr. MILLER. I object to this, for it is repetition, over and over again, and I should think that counsel at some time would arrive at a point where he would think that he had proved the facts or was incapable of proving them.

Q. Now, you say you rectified this disparity or difference in rates between those western Pennsylvania points, including Titusville and Olean and Rochester?—A. Which disparity?

Q. Well, the one I am talking about——A. Any particular one, or a general——

Q. All of them.—A. As I testified, the rates I found upon investigation to be inconsistent and incongruous in their relation one to the other, and as between the different oil-producing districts, with the result that in March, 1905, we brought about what we believed to be some consistency in the rates and in the adjustment of them.

Q. Do you know the American Oil Works?—A. I have heard of them.

Q. Mr. Westgate connected with it?—A. Yes, sir.

Q. At Titusville?—A. Yes, sir.

Q. Didn't he, in 1902, protest to your company against those rates?—A. I don't recall that he did in that year. Which rates?

Q. The rates to the points on the Adirondack division of your line?—A. Not to my knowledge.

10996 Q. You don't know anything about it?—A. No, sir.

Q. The Mohawk and Malone is a part of the Adirondack division?—A. It is now a part of it.

Q. When did it become?—A. That was operated for some years separately. Just when its separate organization was discontinued—it was along about 1900 or 1901 or 1902, I don't recall which.

Q. How long has the New York Central controlled it?—A. I think about eight or nine years.

Q. It controlled it in 1902?—A. Yes; it did.

Q. I now ask you if it is not a fact that in 1902 Mr. Westgate asked you to apply the Boston rate; that is, the rate from Titusville to Boston, to points on the Mohawk & Malone road in northern New York, and that your company declined to do it, and Mr. Goodman wrote him he could not do it, because of the high rates on the Mohawk & Malone [showing witness letter].—A. I have no knowledge of this letter.

Q. Read the letter and see.

Mr. MILLER. I object to that. The letter shows for itself. This, as I take it, refers to the letter that the counsel has already offered in evidence, and I also object because it is incompetent as against us.

A. I have no knowledge of this letter.

Q. Do you know that signature?—A. That appears to me to be the signature of S. Goodman.

Q. Who was he at that time?—A. At that time he was assistant traffic manager.

10997 Q. Of what road?—A. The New York Central & Hudson River Railroad.

Q. Does not that letter purport to be a refusal?—A. No.

Q. What does it purport to be?—A. Well, I don't know what it purports to be. I want to read it and see.

Mr. MILLER. I object to that——

Q. Well, read it.

Mr. MILLER. I object to that. It purports to be what it purports to be. The witness can not determine that. The letter shows for itself.

A. Do you wish me to read it?

Q. Certainly; I asked you to read it.—A. Aloud?

Q. No; you can read it to yourself or read it aloud—A. The first paragraph states that "Boston rates have never been applied to the Mohawk & Malone Railroad," which, to my recollection, is a correct statement.

Q. Now, as to that, what was the Boston rate from Titusville to Boston? 23½ cents, wasn't it?—A. Yes; 23½.

Q. You refused then—you did not apply Boston rates at that time to the points on the Mohawk & Malone road in New York?—A. No; nor to the northern end of the R., W. & O. division either. The second paragraph sets forth that the traffic in its volume on the Mohawk & Malone Railroad is very small and the cost of operation is high, and they could not afford to apply the same rates there as to other points on the New York Central.

Q. Yes.—A. The third paragraph sets forth that it would

10998 not help the American Oil Works of Titusville if that were done, on account of the changes in rates that would be made from other points.

Q. Now, let us see. Then you did refuse to apply the Boston rates, under that letter?—A. No; I would not say that was a refusal.

Q. They did not do it, did they?—A. No.

Q. Very well. During that same time you were hauling oil from Rochester onto this same railroad for either 15 or 20 cents a hundred, weren't you?—A. Yes, sir; you say during the same time?

Q. Yes.—A. That is 1902. Idon't recall that those 15 or 20 cent rates were in effect in 1902. They were in effect in 1904 and '5, according to my recollection.

Q. Weren't they in effect in 1902?—A. I don't know. I would like to see the tariff before I make that answer.

Q. Well, will you look and see?—A. I think you have them all there, haven't you?

Q. No; we have not.—A. What years?

Q. 1905 and 1906.—A. I will confine my answer to the 15 and 20 cent rates for the time being to 1904 and '5. I don't know from recollection whether they were in effect before that.

Q. They were in 1904.—A. Well, they were at that time, then. That condition existed.

Q. Weren't they in effect in 1903?—A. I don't recall, but I will tell you instantly if you have the rate order here.

Q. I haven't got it back of 1904 [handing witness paper].—A. Those rates were in effect in 1904 and '5, but whether they
10999 were back of that I am not clear as a matter of memory.

Q. In 1904 and '5 you did not apply those rates from Titusville either, did you?—A. In 1905 we did; yes, sir.

Q. I mean prior to March, 1905?—A. No.

Q. No, sir. Now the rate from Rochester to Boston was 23½ cents, wasn't it?—A. Rochester to Boston?

Q. What was it?—A. Rochester to Boston?

Q. Yes.—A. I don't recall. I would have to look that up for you.

Q. Have you got it there before you?—A. No; that is not Rochester. 23½ cents was the rate from Titusville to Boston.

Q. Yes, sir; so that when you were refusing, or the New York Central was refusing, to make the Boston rate applicable to the Mohawk & Malone Railroad in New York, you were actually making a less rate than the Boston rate from Rochester?

Mr. MILLER. I object to that.

A. No, sir; we were making a higher rate.

Q. How much higher than the Boston rate?—A. The rate from Rochester to Boston was, to my certain recollection, less than 20 cents. It was less than 15 cents from Rochester to Boston. We made a higher rate than that from Rochester to the Adirondack division.

Q. You were making a 15-cent rate to some of that territory?—A. Yes; my recollection is the rate from Rochester to Boston was less than that.

Q. Will you produce it and show what it was?—A. I certainly will.

Q. All right. Now, is it not a fact that Mr. Westgate——
11000 (A paper was here handed to the witness by Mr. Durand.)

WITNESS. The rate was 16 cents, it appears. Assuming that the rate was 16 cents, it goes, therefore, that the rate to a part of the Adirondack division was higher than it was to Boston.

Q. And part of it lower?—A. Yes, sir; assuming that 16-cent rate to be correct. I will look it up, however, and let you know.

Q. If you could make that rate from Rochester onto the Mohawk & Malone, why couldn't you do it from Titusville?—A. I don't know

what influenced the making of the rate from Rochester to Boston, nor from Rochester to the Adirondack division. I did not make them.

Q. The fact is that the Standard Oil was the only shipper from Rochester, and the independents were at Titusville, weren't they?—A. That is a deduction, isn't it?

Q. Since March, 1905, and during 1906, your company has reduced the rates from Titusville to western Pennsylvania points to northern New York and Vermont points to the Boston rate of about 19 cents, hasn't it?—A. To some points, not to all. To some points it is less than the Boston rate.

Q. Yes.—A. Materially less.

Q. Yes, some less, and some the Boston rate?—A. Yes, sir.

Q. In other words, during 1906 you reduced the rates from Titusville and other western Pennsylvania points to northern New York and Vermont points to either the Boston rate or less than the Boston rate?—A. During 1905.

Q. During 1906?—A. During 1905; yes, sir.

11001 Q. What time in 1905?—A. Throughout the year, depending——

Q. All of the year?—A. Yes; depending upon the effective dates when the various interstate carriers corrected their tariffs in accordance with our request, but our request to correct the rates was made during the month of March, 1905.

Q. Yes; but they were not corrected down to 19 cents until 1906, were they?—A. The principal roads corrected them within 30 days, the straggling roads did not, and we repeatedly asked them to do so.

Q. How about the Rutland Railroad? When did it commence to pro rate and make the Boston rate to those points?—A. That was in the latter part of 1906.

Q. You controlled the Rutland road at that time, didn't you?—A. The New York Central did; yes, sir.

Q. That ought to have been one of the easiest ones to get to reduce the rate, oughtn't it?—A. Not necessarily. The mere fact that the New York Central controls the Rutland Railroad can not change its traffic policy in a moment, or its relations with other carriers.

Q. Mr. Westgate wrote your company in 1904, and wrote them repeatedly in the fall of 1904, asking you to reduce those rates so that he could reach northern New York and Vermont points from Titusville, didn't he?—A. Yes, sir; and the delay I am personally responsible for, in large part, by reason of the fact that I had a few other duties to perform besides looking into Mr. Westgate's complaint about oil rates.

Q. And it was nearly two years——A. A year and a half, perhaps.

11002 Q. Well, a year and a half before you got around to do it?—A. Yes, sir; because that was involved with the entire fabric of oil rates, and we undertook to put in what we finally did put in, what we believed to be at least a consistent basis of rates.

Q. But that consistent basis of rates was not put in until after this investigation started by the Department of Commerce and Labor and all these rates had been unearthed, was it?—A. Yes.

Q. It was?—A. Yes, sir; these rates had not been unearthed until the Garfield report of May, 1905, so far as we were aware.

Q. The investigation started at the beginning of that year, didn't it?—A. But we were not aware of what the scope of that investigation was, or at least what its results were.

Q. But you knew there was one going on?—A. Certainly.

Q. Didn't he make the same request long before 1904?—A. Not to my knowledge.

Q. Not to your knowledge. When did you apply the Boston rate to New York and Ottawa points in northern New York?—A. My recollection is, late in 1906.

Q. Didn't he ask for that in 1904?—A. The latter part, I believe; yes.

Q. The latter part of 1904?—A. Yes.

Q. And you did not grant that request until the latter part of 1906?—A. It did not go into effect until then; no.

Q. That was two years afterward?—A. No; it was not.

Q. What reason did you give for not making those rates
11003 with the New York & Ottawa Railroad?—A. I did not give any.

Q. You did not give any?—A. I have stated the reason here.

Q. What was it?—A. That I had an overwhelming pressure of other duties that prevented my giving the subject of oil rates the necessary attention until the situation rendered it necessary.

Q. When did the New York Central get control of this New York & Ottawa Railroad?—A. My recollection is it was in 1905.

Q. In 1905?—A. Yes, sir.

Q. What time?—A. The early part.

Q. The early part of 1905. Wasn't it the latter part of 1904?—A. Not to my recollection.

Q. Very well. Now, is it not a fact that Mr. La Bau wrote to the American Oil Works, of which Mr. Westgate was an officer, and said that the New York & Ottawa Railroad was "an entirely independent line, and charges very high arbitrary rates, and we are not in a position to force any basis of rates we may desire into that territory, and our situation is a good deal the same to Montreal?"—A. The letter is dated November 22, 1904.

Q. Yes, sir.—A. That was the fact at that time. We did not control the New York & Ottawa Railroad.

Q. And at that time the New York & Ottawa Railway would not prorate with you?—A. I don't know as to that.

Q. Well, what does he say?—A. He says that they demanded arbitraries.

Q. Very high arbitraries, didn't he?—A. Yes, sir. That is different from the refusal to prorate.

11004 Q. Well, isn't it a fact——A. You can prorate as long as you get 90 per cent of the joint rate.

Q. Isn't it a fact that prior to that time the New York & Ottawa had offered Mr. Westgate's company to accept the ordinary divisions of the Boston rate?—A. Not to my knowledge, nor do our records show that fact.

Q. Did you take it up with the New York & Ottawa to find out?—A. Myself?

Q. No; your company,—A. I did not. I didn't recall whether it was done by others.

Q. That letter is signed by Mr. La Bau?—A. Yes, sir; that letter is signed by Mr. La Bau.

Q. And it states that they demanded very high arbitraries.—A. That is what it states.

Q. Now, I show you a letter from Mr. Brown, assistant general freight agent of the New York & Ottawa, dated February 6, 1902, in which he states that they are willing to accept the ordinary divisions of the Boston rate of 23½ cents.

Mr. MILLER. I object to that as not proper cross-examination, this being only another method of counsel's again reading or again getting into the record correspondence that he has already gotten in and with which these defendants had nothing whatever to do.

A. This letter, from all I can make out of it, is dated February 6, 1902. It refers to a rate of 23½ cents. It does not say from where or on what; but the New York & Ottawa, he says, is willing to accept the percentage allowed it on the 23½-cent rate, governed by the Red Line percentage book.

11005 Q. That is the ordinary percentage of the Boston rate, isn't it, from Titusville?—A. No; the ordinary percentage of the Boston rate would be different to Boston via Boston Railroad than it would be to Ottawa via the Ottawa Railroad.

Q. I mean that would be the ordinary percentage of the 23½-cent rate to the New York & Ottawa points?—A. That is what he said; but whether that applied to petroleum or not that letter does not say a word.

Q. Was he writing to the American Oil Works about something besides petroleum, do you think?—A. I don't know.

Mr. MILLER. I object to that.

Q. Don't you——A. I don't know.

Q. Don't you know that the New York & Ottawa was willing to pro rate with you and accept the ordinary proportions, and your company would not do it?—A. I do not.

Q. Does not that correspondence say it?—A. No; it does not.

Q. It does not?—A. No, sir.

Q. Do you know that they were not willing to?—A. I do not know that; no.

Q. You don't know anything about it?—A. No, sir; whether they were or not; no.

Q. I thought during these two years you were trying to adjust these rates?—A. I was.

Q. Well, were you trying to adjust them with the New York & Ottawa?—A. I adjusted them very speedily——

11006 Q. After the Government got after you?—A. After the New York Central Railroad got control of the New York & Ottawa Railway we undertook to say what the adjustment would be. It was not necessary for us, under those conditions, to consult the New York & Ottawa Railway as to whether they would join in any rate or not.

Q. But it took you nearly two years to get around to it?—A. It did, sir.

Q. During all this time the independent refiners from Titusville were paying higher rates if they got in there at all?—A. They paid whatever rates were in force.

Mr. MARTYN. Or were going in on illegal rates, as Mr. Westgate's bills show he did go, in most instances.

Mr. KELLOGG. It does not show anything of the kind, Mr. Martyn. It shows he paid the tariff rates exactly—the tariff rates, which were twice as high as the Standard paid.

Mr. MARTYN. You overlooked the exhibit we put in showing the contrary.

Mr. KELLOGG. Your exhibit was not correct in any respect.

Mr. MARTYN. You have not pointed out any inaccuracies in it yet.

Mr. KELLOGG. The tariff shows that.

Q. Why didn't you take up the adjustment of these rates between the independents and the Standard Oil shipping points before 1906 and 1905?—A. I took it up, as I testified before, or began to take it up, in 1903.

Q. You began in 1903?—A. I made a partial——

Q. But you did not get around to do anything until 1905?—

11007 A. I made a partial adjustment in 1903. I finished the job up in 1905, and I think I did it completely.

Q. You mean you completed it in 1906?—A. As to our own roads, before we controlled the New York & Ottawa, it was completed in March, 1905. As to the New York & Ottawa Railroad, in 1906.

Q. Now, you said that this Grand Trunk tariff, in connection with the National Despatch-Great Eastern Line, makes a 27-cent rate from Toledo to Burlington, Vermont?—A. Yes, sir.

Q. Will you please state what the Lake Shore's rate was from Toledo to the same place?—A. Toledo to Burlington?

Mr. MILLER. I object to that.

Q. Into Burlington, yes.—A. I would have to have the billing book with it.

Q. No; you don't. It is stated right there.—A. Well, you will pardon me. I think I have been construing those tariffs a little longer than you. I say I would have to have the billing book with it.

Q. It shows in the tariff?—A. But I must have the billing book in connection with this tariff as to Burlington, I believe. Let us see.

Q. Well, we will see. I think you had better see before you make such a positive statement, because you are mistaken.

Mr. MILLER. I object to the statement as to the Lake Shore road as immaterial and not proper cross-examination.

Mr. KELLOGG (to Mr. Durand). Show him where it is.

Mr. DURAND. There is an index at the beginning. It shows Burlington, 6405.

WITNESS. What did you say?

Mr. DURAND. I said it is numbered 6405.

11008 Mr. MILLER. May I ask what the document is that the witness examines? What exhibit number, so as to identify it?

Mr. KELLOGG. It is not an exhibit. It is their New York Central tariff—Lake Shore tariff.

WITNESS. I withdraw my suggestion and apologize. This tariff is not necessarily used in connection with the billing book. It names a rate. Assuming that it was not changed by any supplement, the body of the tariff names a rate on petroleum and its products from Toledo to Rutland of 44 cents a hundred pounds.

Q. Toledo to Burlington, 44 cents?—A. Toledo to Burlington, Vermont.

Q. 44 cents a hundred?—A. Yes, sir.

Q. Now, what is the tariff that you have there?—A. It is Lake Shore & Michigan Southern Railway joint freight tariff, I. C. C. No. A1353.

Q. Effective when?—A. It was effective November 2, 1903, cancelled January 1, 1907.

Q. So that during the time this Grand Trunk tariff made a rate of 27 cents the rate on Lake Shore and its connections was 44 cents?—A. Yes, sir.

Q. To Burlington?—A. According to the tariffs, sir.

Q. Now, the Lake Shore is the most direct route to Burlington from Toledo, isn't it?—A. I should say it is, yes; shorter than the Grand Trunk route. This Lake Shore tariff applied via the Rutland Railroad. The Grand Trunk tariff applied via the Central Vermont Railroad.

11009 Q. What was the Grand Trunk's rate to Portland during that time—Portland and Rockland? Look at them both.—A. By the Grand Trunk tariff I. C. C. No. A944 and the National Despatch billing book No. 9, the rate was 27 cents.

Q. Now, what was your rate to Portland?—A. Whose rate?

Q. The Lake Shore and the New York Central.—A. The Lake Shore rate, if you will allow me.

Q. It is the same thing as the New York Central.

Mr. MILLER. I make the same objection to this as before. I suppose it may go to all of the Lake Shore testimony.

Mr. KELLOGG. Yes; it may go to all of this.

A. To Portland, Maine, the rate was 27 cents plus 10.

Q. 37 cents over your line and 27 over the Grand Trunk?—A. Well, it was the rate over our line and other lines with which the Lake Shore had pro rating arrangements.

Q. Yes.—A. The rate to Rockland, Maine, was 27 plus 10 plus 10.

Q. 47 cents?—A. Yes, sir.

Q. And 27 cents over the Grand Trunk?—A. Yes, sir.

Q. Now, do you believe, Mr. Kallman, that the Lake Shore road had rates with its connections into all those Boston & Maine and New England points from 10 to 15 and 20 cents higher than the rates on the Grand Trunk road?—A. Yes.

Mr. MILLER. That is objected to.

Q. You think so?—A. Yes, sir.

Mr. MARTYN. You know it, don't you, Mr. Kallman?

WITNESS. I do.

Q. Did you know it at the time?—A. Yes.

11010 Q. You have always known it?—A. Yes.

Q. Have been perfectly familiar with the Grand Trunk tariff?—A. Not with the Grand Trunk tariff, not perfectly familiar with that, but I was perfectly familiar with the fact that for years the Boston & Maine Railroad did not pro rate on petroleum traffic, except to certain divisions and stations on its line.

Q. But you did not understand that they were pro rating with the Grand Trunk, did you?—A. No, sir.

Q. According to your statement they were giving the Grand Trunk lower rates, giving them the Boston rates, and not your line?—A. I am taking that Grand Trunk tariff as it reads, and as it reads it makes a rate of 27 cents to those points.

Q. Did you ever hear of that Grand Trunk tariff making those rates until this trial, until it was called to your attention by the counsel for the Standard Oil Company?—A. Making this 27-cent rate?

Q. Yes, sir.—A. As against the 44?

Q. Yes, sir.—A. I don't recall that particularly.

Q. No, sir. So that you have been an important freight official of the New York Central for years; you knew your line did not get pro rating arrangements to those New England points that you refer to?—A. Yes.

Q. And you never heard that the Grand Trunk did?—A. On a more favorable basis as to rates?

Q. Yes.—A. No.

Q. And the first time you ever knew that was here at this trial?—A. Yes, sir; that is, as to a more favorable rate?

Q. Yes.—A. To common points, on petroleum traffic into

11011 Boston and Maine territory?

Q. Yes. A. I did not.

Q. Now, it is a fact, is it not, as you have just stated, that, generally speaking, Boston & Maine and Maine Central points, with the exception of what was known as the Fitchburg part of the Boston & Maine road, did not prorate with your lines on oil shipments

from Pennsylvania and New York points?—A. There were about four divisions of the Boston & Maine Railroad that were open to us at a prorate. The balance were not.

Q. Very well. Those four divisions were what was known as the Fitchburg Railroad, weren't they?—A. No; they were not. There were more than that.

Q. Well, it is a small part of the Boston & Maine Railroad, isn't it?—A. No; it is about half of it.

Q. Give me that map.—A. It is more than half of it.

Q. Well, we will see about that. We will take the Maine Central. The Maine Central did not prorate with your line, did it, for many years prior to 1906?—A. No, sir.

Q. In other words, they demanded an arbitrary rate over the Boston rate?—A. Yes, sir.

Q. Part of the Boston & Maine did not prorate with your line prior to 1906?—A. No, sir.

Q. They demanded arbitrary rates over the Boston rate—on petroleum I am speaking of now.—A. Yes, sir.

Q. The New York & New Haven road did not prorate with your line prior to 1906?—A. No, sir.

Q. They demanded arbitraries over the Boston rate?—A. Yes, sir.

11012 Q. So that the shippers of petroleum into the territories you have just mentioned, over your lines, connecting with the New Haven, the Boston & Maine, and the Maine Central, had to pay arbitrary rates over the Boston rates to those towns?—A. No; not over the Boston rate; over whatever the junction point was.

Q. Usually over the Boston rate, wasn't it?—more than the Boston rate?—A. No, no; into the New Haven territory they did not.

Q. Had to pay the local rates to those towns?—A. That only applied to the Boston & Maine. It did not affect the New Haven territory at all.

Q. Then, as to the Boston & Maine and the Maine Central they had to pay arbitraries over the Boston rate?—A. Yes, sir; to most of the territory.

Q. Now, do you think the Grand Trunk prorated in territory that you did not?

Mr. MILLER. I object to that.

A. I don't know whether they did or not. We all had prorating arrangements on general traffic.

Q. I am talking about oil now.—A. I don't know whether they did prorate or not.

Q. You know your company did not?—A. Yes; did not at that time.

Q. Now, I show you a map which is an exhibit in this case—petitioner's Exhibit 672—which shows the territory marked blue as the territory of the Boston & Maine Railroad on which prior to

11013 1906 it prorated on the oil rates.—A. Well, at a casual glance I should say that is correct.

Q. Now, the lines marked green are the Boston & Albany?—A. Yes, sir.

Q. They prorated prior to 1906?—A. Yes, sir; and the Boston & Albany happened to be New York Central property at that time.

Q. Yes; that was a New York Central line. Now, some time during the year 1906, at various times during that year, these New England roads resumed or commenced to prorate with the western roads on oil shipments from the West, did they not?—A. The New Haven and the B. & M. railroads.

Q. And the Maine Central?—A. And the Maine Central; yes.

Q. And that prorating caused a general reduction in the oil rates from the West of from 6 to 10 and 12 cents a hundred, didn't it?—A. Yes; the latter as to points which took arbitraries over the Boston rates.

Q. I show you a letter dated August 22, 1905. By the way, do you know Mr. Donovan?—A. I do.

Q. Do you know his signature [handing witness paper]?—A. I have never seen him sign his name myself, but that looks like his signature to me.

Q. I show you petitioner's Exhibits 934 and 935 and ask you if those are Mr. Donovan's signatures?—A. They look to me like Mr. Donovan's signature as I know it. I have never seen him sign his name personally.

Q. Well, you have had a good deal of correspondence with him?—A. Oh, yes.

Q. Had letters from him signed with that signature?—A. Yes.

11014 Q. Now, if you will examine both of those letters, then I would ask you if you think, in the light of those letters, that the Boston & Maine Railroad prorated with the Grand Trunk Railway to the points mentioned therein.

Mr. MILLER. I object to that as not proper cross-examination and as incompetent, immaterial, and irrelevant. The question of what this witness might think from evidence that is itself incompetent is not admissible or proper evidence.

A. In the first place, we never received any notice from the Boston & Maine Railroad of a similar character to that set forth in these two exhibits or letters. In the second place, the relations between the Grand Trunk Railway and the Boston & Maine Railroad are in a very large measure different from what they are between the Boston & Maine Railroad and its connections at its western junctions. Following that, from those facts it would not follow at all that what it would undertake to do with its western connections it would or would not do with the Grand Trunk Railway. I have no knowledge, nor would I be justified in making any assumption from those letters, as to what they would do.

Q. But the statement in those letters is unqualified, is it not?

Mr. MILLER. I object to that.

Q. "Below is a list of our stations to which shipments of petroleum and its products are required to pay a local rate when received from connecting railroads." Is there any distinction?—A. Those words are as you have read them. There is no distinction as to that.

11015 Mr. MILLER. That is not a refund to prorata.

Q. And the second letter is even more specific, and states, "Shipments of petroleum and its products coming to us from connecting railroads, through waybilled to points on the divisions above stated and destined to points on this railroad enumerated in my letter to you of August 22, 1905, to which no through rates are published, from the oil regions of Ohio and Pennsylvania, would be subject to local rate from the nearest point to which through rates are published from Ohio and Pennsylvania," isn't it?

Mr. MILLER. I object to that.

A. That is the way the letter reads.

Q. Now, there is no exception stated in those letters of the Grand Trunk Railway?—A. No, sir. Nevertheless, from my knowledge of the relations between the Boston & Maine and its connections I should say that what it might say it would do or do with its western or trunk-line connections would be no criterion for what it might do with its Canadian connections.

Q. But you do not think Mr. Donovan would make a positive statement that they did not do it?

Mr. MILLER. I object to that.

A. He might have had in mind interstate commerce and United States lines for all I know. I don't know what he would do with the Grand Trunk Railway.

Q. What were its relations with the Grand Trunk that were different?—A. They are very close.

Q. In what way? Does the Boston & Maine own the Grand

11016 Trunk?—A. No, but the Grand Trunk (if you will look at the map) enters a large part of the territory that is tapped by the Boston & Maine and the Maine Central Railroad. The Grand Trunk has a line of its own to Portland, handling export and import traffic. It is a direct competitor of the Boston & Maine system, more so than any other road there is.

Q. The Boston & Albany runs right into the heart of that territory?—A. Yes; perfectly true.

Q. And the New York Central owns the Boston & Albany?—A. Yes; but you want to bear this in mind, that the Grand Trunk Railway is what is known as a differential line, and it is permitted, and does, in fact, exercise the right to charge lower rates than its competitors, and that has a very important bearing on the traffic conditions.

Q. Don't you think, Mr. Kallman, that if it is true that the Grand Trunk Railway during the year 1905 had a rate to a large number of New England towns from 15 to 20 cents a hundred on oil lower than your road, that you or the Pennsylvania or some of your traffic men would have found it out before this trial?

Mr. MILLER. I object to that.

A. I would say if that were true of the Lake Shore Railroad, that they would probably stir about to get an equal rate.

Q. Well, they did not do it, did they?—A. I don't know.

Q. Your tariff shows they did not?—A. That tariff, as I have read, provides higher rates there than are in that Grand Trunk tariff.

11017 Q. Now, isn't it a fact, Mr. Kallman, that this Grand Trunk tariff did not apply to petroleum at all, and on its very face it is excepted from it?—A. No, sir.

Q. Let me read you this: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide." Is that there?—A. That is in the guide. Now, if you will let me have the tariff, I will read you another clause.

Mr. MILLER. Let him have the tariff.

Q. Was not that clause for the same purpose in that billing instructions as it was put in the Red Line billing instruction?—A. I don't know what they put that in for.

Q. You have it in the Red Line billing instruction, haven't you?—A. Not now; no, sir.

Mr. MARTYN. The book itself answers the question.

Q. You used to have it, didn't you?—A. We did as to certain territory; not as to all.

Q. And during that time petroleum did not take those rates, did it?—A. It did to some points.

Q. It did where you had tariffs for it?—A. Certainly. You have got to read the tariff with the billing book. You have read a clause from the billing book. Now, if you will let me have the tariff I will read another clause, on which I base my reading of the tariff.

Q. Is there a rate named on the face of this tariff to Portland, Maine?—A. No, sir.

Q. Of 27 cents?—A. No, sir.

Q. Is there one to Rockland, Maine, of 27 cents?—A. No, sir.

11018 Q. Is there one in Burlington of 27 cents?—A. No, sir.

Q. Oh, you spell that out from some other document, do you?—A. No; I spell it right out of this document.

Q. How?—A. Will you permit me to read it?

Q. Yes.—A. This is a tariff issued by the Grand Trunk Railway. It is in connection with many others—the Central Vermont Railway, the Boston & Maine Railroad, and the Maine Central Railroad—and it provides that it applies in connection with connections specified in the following agents' guidebooks and billing lists, among which is named the National Despatch-Great Eastern Line, which is the book you had.

Q. So you have to refer to that?—A. It names a rate from Toledo on petroleum and its products in carloads to Boston, Massachusetts, of 27 cents. It contains a clause. There is no means of ascertaining what the rate is to any other point than Boston and the ten or fifteen

other points enumerated here than by the use of the billing book. The tariff contains a clause which reads: "For list of stations to which above rates apply, see various fast freight line billing instructions." Now, since there was no exception made in that clause in the case of the National Despatch billing instruction book, anyone picking up that tariff is warranted in assuming that it names a 27-cent rate from Boston to Burlington, Vermont, and Rockland, because those points are named in the billing book as taking Boston rates.

Q. You have got to refer to this billing book in order to get the rate?—A. Yes, sir.

11019 Q. And the billing book states on its face that petroleum is not included?—A. Yes, sir; but this tariff is issued at a later date, and may be held to supersede it as far as it is in conflict.

Q. So if that tariff was issued before the billing book, it would not supersede it?—A. It might be a question.

Q. Now, is not that the same kind of a clause that is in your billing book, substantially?

Mr. MILLER. I object to that as not cross-examination and immaterial.

A. This reads: "Shipments of petroleum destined to points on and reached by the Boston & Maine Railroad" only (I put in the word only) "can not be taken at the rates named in this tariff unless such points are prefixed with the reference number 5." Now, that is an essentially different condition from the tariff you have shown me, the Grand Trunk tariff.

Q. But you never found that out until you came to this trial?—A. I did not find it out; no, sir.

Q. And no other railroad man as far as you know ever found it out?—A. I don't know about that. I have no knowledge of that.

Q. Don't you ordinarily keep pretty close track of your competitors' rates?—A. I generally do, but the principle of——

Q. But you overlooked this, did you?—A. Wait a moment, please—but the principle of the conduct of railroad traffic is that the initial carrier looks out for the rates of the competitor, not any intermediate carrier.

Q. Did you ever hear that the Lake Shore had found this

11020 out?—A. No; I did not.

Q. Did you ever hear that any carload of oil had ever been shipped under that rate?—A. No; I have not. I have no knowledge of it.

Q. Now, as I understand, in 1905 you were looking up the oil rates and adjusting them with other roads?—A. So far as those rates applied to points on our own lines.

Q. You were also looking them up with other lines?—A. No, sir; only on points from other lines to points on our lines.

Q. You wrote letters to the Lake Shore people, didn't you?—A. To every railroad in the three oil districts, in regard to rates on oil to points on the New York Central and West Shore railroads.

Q. And you never discovered this most remarkable tariff?—A. No, sir. I don't say that that is very remarkable, incidentally. There were others like it.

Q. Can you name another railroad in the United States that had a tariff to those points of the Boston rates during that time?—A. I don't know of any. I have not had my attention called to any.

Q. And do you believe that all the railroads in the United States were fooled by the Grand Trunk and did not get onto that rate?

Mr. MILLER. I object to that as assuming a fact.

Q. You ask us to believe that, do you?—A. I do not.

Q. Oh, you don't. I should not think you would.

11021 Mr. MILLER. I object to counsel's testifying here, and I move to strike out his statement.

Q. Why, prior to 1906, did not your lines prorate with the New Haven and the Boston & Maine and the Maine Central on oil shipments from western Pennsylvania and Ohio points?—A. Because they would not prorate.

Q. They would not prorate with you?—A. No.

Q. They declined to?—A. Yes.

Q. Why did they agree to do it in 1906?—A. Well, really, you would have to ask somebody connected with those roads. I don't know. They did not give us any reason.

Q. There was a good deal of agitation about this subject about 1905, wasn't there?—A. Oh, yes; I have heard nothing but oil for the last two years, or the last two or three years.

Q. And a suit was brought before the Interstate Commerce Commission, wasn't it?

Mr. MILLER. I object to that.

A. Which has been disposed of by the Commission by denying the application of the petitioners.

Q. Did not the Interstate Commerce Commission hold that the New England roads refused to prorate; that it was a discrimination against the western oil shippers, but that the Commission under the act of Congress at that time had no power to compel them to prorate?

Mr. MILLER. I object to that. Wait a minute.

A. I don't recall the case you refer to.

Mr. MILLER. Wait a moment, Mr. Kallman. I object to counsel's statement.

11022 Mr. KELLOGG. He said they decided against the petitioner.

WITNESS. Pardon me. I had in mind the National Petroleum Association complaint.

Q. I will show you you are mistaken about the case.—A. I probably have a different case in mind from you.

Q. I think you have. I think you have another case in mind. This was the case of Fred G. Clark and the Waverly Oil Works against the New England roads.—A. I don't recall that case.

Mr. MARTYN. The Commission held they had no jurisdiction.

Mr. KELLOGG. Had no power under the act of Congress, but they held it was a discrimination, nevertheless.

Mr. MILLER. There being a little interval during which I may object, I will now interpose my objection.

Mr. KELLOGG. All right, sir.

Mr. MILLER. I object to counsel's statement of the decision of the Commission as incompetent. The decision will itself show. Then I object to the whole subject-matter as not proper cross-examination and as immaterial and irrelevant. If the Commission had decided something that you could not get any relief about, why, then, they had no business to decide it. They had enough to do and have enough to do to decide cases as to which the law has vested in them the authority to decide.

Mr. KELLOGG. Mr. Miller, you are well aware that the Commission for many years had authority to decide that a rate was not a legal rate, but they did not have authority to put in one that was, and they went on constantly deciding such cases.

Mr. MILLER. They had no right to decide as to whether the New Haven road should prorate with western roads on oil, that
11023 being entirely a matter of agreement under the law.

Mr. KELLOGG. They had an absolute right to decide that it showed discrimination.

Mr. MILLER. But the question of prorating, or agreeing with another road as to rates, was entirely a matter of agreement prior to the Hepburn Act in 1906. The Commission so decided, and the Supreme Court affirmed their decision in the Southern California case, in 200 U. S., and held that it was a matter of agreement.

Q. The practical effect of that refusal to prorate was to cause the western independent oil shippers in Pennsylvania and Ohio to pay a much higher rate to New England than they now have to pay, wasn't it?—A. The practical effect of their refusal to prorate was that the rates were higher than they would have been under joint rates.

Q. Yes; higher than they were afterward when they did prorate?—A. Yes.

Q. You say you are not familiar with this case of Fred G. Clark?—A. Now, I only have a slight recollection of it. I do not recall the details of it.

Mr. MILLER. I object to the question whether Mr. Kallman is familiar or unfamiliar with it as entirely immaterial. If he desires to become familiar with it, he can take another occasion.

Q. What lines does the New York Central control in Canada?—A. In Canada the Ottawa & New York Railway and the St. Lawrence & Adirondack Railway.

11024 Q. Where do they run?—A. The Ottawa & New York Railway runs from Cornwall, Ontario, to Ottawa, Ontario. The St. Lawrence & Adirondack Railway in Canada runs from Athelstan to Adirondock Junction, which is near Montreal.

Q. Have you since the adjournment to-day noon taken counsel as to whether you will furnish us any other tariffs that were not filed

with the Interstate Commerce Commission that were used by the Standard Oil Company out of Buffalo or out of Rochester?—A. I did not have opportunity, but I understood you were going to write out some requests that you wanted me to—I did not have opportunity, however, to go up town. There was not time enough.

Q. Will you do so between now and to-morrow?—A. Will you be good enough to give me a memorandum of just what you wish?

Q. I will have to go over the testimony to do that. I thought you had that memory. I want the tariffs.—A. You asked me for two or three things, but I do not recall that you insisted upon them finally.

Q. I certainly insist on them.—A. You made one memorandum. You wanted, as I understood it, a memorandum or statement of the oil we carried from Buffalo to Norwood at 12 cents, destined to points beyond, during the time that the 12-cent rate was in effect. That is the only specific request I recall that you insisted on. If there were any others, I would be glad if you would give me a memorandum of them.

Q. Here are two of them [handing witness memoranda]. Now, the other one that I asked of you——A. I take it this first one
11025 is without any instruction or limitation as to period, nor as to what the rate was. I understood your request, which reads: "Will you please give me a statement of any shipments made——"

Q. I will dictate that right now so there will be no misunderstanding.—A. It is the 12-cent rate, as I understand it, while the 12-cent rate was in force.

Mr. KELLOGG. Mr. Chase, will you please take this down: Please look up and give us a statement of any shipments made from Buffalo or East Buffalo, or from the Standard refineries at Buffalo or in that neighborhood, to Norwood, destined to points in northern New York or Vermont, either, or shipments from those places coming from Olean. You understand?

WITNESS. Yes.

Mr. KELLOGG. Under the 12-cent rate, which was not filed with the Commission. You understand that?

WITNESS. Yes. You are asking now for a statement of oil rates, oil shipments, not only from Buffalo to Norwood when destined to points in Vermont, but to Norwood when destined to points in New York.

Mr. KELLOGG. Yes.

WITNESS. You want a statement of intrastate as well as interstate shipments?

Mr. KELLOGG. Yes; I want you to specify which shipments came from Olean.

WITNESS. Yes; I understand that.

Mr. KELLOGG. And which shipments came from Buffalo.

WITNESS. I understand your inquiry. You ask us to produce here a statement of shipments of oil moving strictly between
11026 points within the State of New York, having their origin

and destination in New York, as well as interstate shipments which moved from Buffalo to Norwood under the 12-cent rate.

Mr. KELLOGG. Yes; those that you can separate. Second, I wish you to produce any other tariffs not filed with the Interstate Commerce Commission, from Rochester or from Buffalo to any points in New York other than these that have already been furnished.

WITNESS. During what period?

Mr. KELLOGG. Any period prior to 1906.

WITNESS. For how far back?

Mr. KELLOGG. Oh, I would not go back beyond 1900.

WITNESS. I doubt whether we have them that far back.

Mr. KELLOGG. Well, that is the question that I understood you to say you wanted to take counsel on.

WITNESS. That and the first question.

Mr. KELLOGG. All right.

WITNESS. You are asking on petroleum and petroleum products only from Rochester and Buffalo to points in New York State on our lines from 1900 to 1905, inclusive?

Mr. KELLOGG. Yes.

Mr. MILLER. Now, this last question includes State tariffs on all commodities, as I understand it?

Mr. KELLOGG. No; on oil.

Mr. MILLER. This last question?

Mr. KELLOGG. Why, certainly. That is the one I asked him this forenoon, if they had any other tariff than this 9-cent rate and this 12-cent rate. He said he wanted to take counsel on that subject, whether he would answer or not.

11027 WITNESS. I think I understand your question. At the same time, if you will be good enough to have them written out, I will have a memorandum of them.

Mr. KELLOGG. Third, please produce the tariffs preceding petitioner's Exhibit 928, dated September 20, 1906, which is the 12-cent rate from Buffalo, you remember?

WITNESS. That is, September 20.

Mr. KELLOGG. September 20, 1905, W. L. 4848. I also ask for the tariffs preceding rate order No. W. K. 201 as far back as you can get them. That is all.

Redirect examination by Mr. MILLER:

Q. You say that the New Haven Railroad refused to prorate on oil?—A. Well, I qualify that by saying that they did not prorate. I don't know that I could produce from our records any communication refusing to prorate on oil. I perhaps should have said they did not prorate.

Q. If they did not prorate, did you in your railroad experience know of any way in which they could be compelled to if they saw fit to refuse?—A. Not prior to the Hepburn law, and questionably under that.

Q. If they had refused to prorate, were there any legitimate considerations in their conduct of their own business, their own railroad, that might lead them not to prorate?—A. I should say there were.

Q. What were they?—A. The fact that they have oil refineries located at seaboard points, with capacity sufficient to supply the demand for petroleum and its products on their road, and in
11028 the carriage of that traffic they would get, or would be apt to get, or be in a position to get larger revenue than they would in taking a share of a joint rate from the Ohio and western Pennsylvania fields. And, again, they would be subject to water competition as to some of the points reached by their road, there being refineries at Wilsons Point, Connecticut, and India Point or East Providence, Rhode Island, as well as at East Boston, Massachusetts.

Mr. KELLOGG. Refineries, did you say?

WITNESS. Refineries or storage places, I should have said.

Mr. KELLOGG. That is different.

Q. Now, just explain, in the conduct of their own business, in looking out for their own interests, how it is that that would lead them to refuse to prorate on oil with their connections west.—A. Simply a business proposition of getting more money out of the traffic they transport.

Q. On the traffic that they would so transport they would get their local rates?—A. Yes, sir; and it is an axiom that local rates are or ought to be higher than the carrier's share of a joint rate.

Mr. KELLOGG. Well, were they higher or lower?

WITNESS. I can't say, but if they were not, it must have been a peculiar condition of affairs.

Q. At any rate the rates over their own road, fixed for their own transportation, would be such as they saw fit to fix?—A. Yes, sir.

Q. Without any direction or control from any other railroad,
11029 and according to your experience then, the New Haven road may have been actuated in refusing to prorate entirely in view of their own interests as a railroad, to carry out and effect their own interests as a railroad?—A. From my knowledge of their situation and the petroleum traffic as affecting them, and not at all undertaking to speak for the representatives of that road, I should say they could have done as they did purely from a business motive.

Q. You know they did, don't you?—A. I know they did not pro rate, and I can understand, as I said, from my experience, that there might have been very good business reasons from their standpoint why they would pursue the policy they did.

Q. They were so situated that they could make more revenue out of not pro rating——A. They were.

Q. —on traffic that was offered to them?—A. Yes, sir.

Q. Now, with the Boston & Maine, do you know whether they refused to pro rate or whether they simply did not have any pro rating arrangements?—A. All I can say as to the Boston & Maine is that they had pro rating arrangements as to certain of their stations and did not have them as to others. I am unable to produce

any communication or notice from the Boston & Maine Railroad to the New York Central, or to other carriers that I have been able to find out, refusing to pro rate to the other territory. They did not.

Q. Were they, too, in acting upon that policy of not pro
11030 rating, so situated, in their own estimation, that they could make more money out of the traffic without it?—A. To an extent. There was a storage plant of the Standard at East Boston and an independent refinery at Somerville, Massachusetts. To an extent they were, perhaps, or at least it would be assumed that they were in a position to get more money out of the oil that they would carry from East Boston or Somerville to some of their points than they would in their share of joint rates on the western oil.

Mr. KELLOGG. You are not testifying to what you know about it?

WITNESS. I am testifying to what I know about the location of the refineries and storage places. As to the volume of the traffic or the rates; no.

Mr. KELLOGG. That is what I thought.

Q. Mr. Kellogg has asked you upon cross-examination something about the inconsistency of the Grand Trunk tariff 944, naming a 27-cent rate, and the Lake Shore tariff that he asked you about. Was there anything unusual, prior, say, to three years ago, or prior to the passage of the Hepburn Act, in tariffs of different roads, or for that matter of the same roads or combination of other roads being altogether inconsistent on the same commodity from initial point to destination?—A. Between principal cities there was not much of that, but to outlying points there is no question that there was a lot of inconsistencies in tariffs, as between different roads especially. Take New York and Chicago, that would be a different proposition, or Philadelphia or Buffalo; but as to outlying points there were more or less inconsistencies or differences between the rates
11031 of different carriers.

Q. Have you any inconsistencies at hand, from Cleveland and the Titusville district to points on the New York Central?—A. Yes; there were, at the time prior to 1905, when we requested revision of the oil rates from the Titusville, Oil City, Cleveland, and Toledo districts to our points. There were very gross inconsistencies.

Q. Do you remember the rates with respect to that? Do you remember what the rate was from Cleveland to Ontario by the Lake Shore, also via the Nickel Plate—the New York, Chicago & St. Louis?—A. Cleveland to Ontario?

Q. Yes; Ontario, N. Y.—A. The rate from Cleveland to Ontario prior to March, 1905, via the Lake Shore and the New York Central, was 19 cents.

Q. How was it by the Nickel Plate?—A. By the N. Y., C. & St. L., commonly known as the Nickel Plate, the rate was 24 cents.

Q. There was 5 cents difference, was there?—A. Yes, sir.

Q. Over two roads, both belonging to the New York Central system?—A. Well, perhaps so less than some other cases that Mr. Kel-

logg has mentioned. The Nickel Plate is not, I apprehend, quite as much controlled by the New York Central as the Lake Shore.

Q. They are allied?—A. They are affiliated lines.

Q. Do you find another route there via the Wheeling & Lake Erie?—A. From Cleveland?

Q. Yes.

(Witness examines papers.)

Mr. KELLOGG. You are not reading from the tariffs, are you?

WITNESS. I am reading from compilations that I am pre-
11032 pared to affirm are correct, that were made from the tariffs.

Q. The compilation was made in the course of your investigation?—A. Yes, sir; at the time. The rate at that time from Cleveland to Ontario by the Wheeling & Lake Erie was 17½ cents.

Q. Are you able to give the tariff authority for your naming those rates here? I would like to give the counsel for the Government the opportunity of verifying them.—A. I can not give them here, but I would be very glad to furnish them. We have the tariffs in our records.

Q. Now, did you find any such situation as that with respect to rates in the Titusville district, say over the Lake Shore and over the Pittsburg & Lake Erie?—A. To what points, sir?

Q. Ontario, still.—A. The same point.

Q. Yes.

Mr. KELLOGG. I object to this unless the tariffs are produced.

Mr. MILLER. Won't it be enough if we furnish you the tariff authority?

Mr. KELLOGG. He is reading a lot of rates that there is no tariff authority for.

WITNESS. I will affirm that these figures are correctly taken from tariffs as in effect at the time the statement was made, shortly prior to March, 1905.

Mr. KELLOGG. I object to it here because we have not got the tariffs. They are the best evidence.

WITNESS. We can produce the tariffs by to-morrow morning, if necessary.

Mr. KELLOGG. All right, sir.

11033 WITNESS. The rate from Titusville to Ontario by the Lake Shore at that time was 18½ cents. Via the Pittsburg & Lake Erie it was 24 cents.

Q. Are you able to give the situation with respect to the rates from Cleveland, Ohio, to Watertown, New York, via the Lake Erie & Western and also via the Lake Shore or the Nickle Plate?

Mr. KELLOGG. That is objected to, as the tariff is the best evidence.

A. Yes, sir.

Q. Well, give them.—A. Cleveland to Watertown via the Lake Shore and New York Central was 26½ cents. What other point?

Q. Well, the Lake Erie & Western.—A. Not from Cleveland?

Q. I have it here, L. E. & W. What is that?—A. Is that Cleveland or Toledo?

Mr. MARTYN. Cleveland.

WITNESS. Cleveland via Lake Erie & Western—that is not right.

Q. That is the memorandum I have here.—A. The Lake Erie & Western does not handle traffic from Cleveland.

Q. Have you comparative rates of the Lake Shore and the Lake Erie & Western, then, from Toledo to Watertown?—A. From Toledo the rate to Watertown via the Lake Shore and New York Central at that time was 29½ cents.

11034 Q. 29½?—A. Via the Lake Erie & Western and the New York Central it was 25 cents.

Mr. KELLOGG. The Lake Erie & Western, did you say, from Toledo?

WITNESS. Yes, sir.

Mr. KELLOGG. Does the Lake Erie & Western run to Toledo?

WITNESS. The Toledo district.

Mr. KELLOGG. It does not run to Toledo at all.

WITNESS. Not from Toledo city, but from points which take the Toledo district rate. There is a certain district where the rate is common.

Mr. KELLOGG. That is a different proposition.

WITNESS. The point on the Lake Erie & Western would be such a point as—there a number of them, but the principal point is Lima.

Mr. KELLOGG. That is quite a distance from Toledo, isn't it?

WITNESS. Nevertheless it takes the Toledo rate. Towns on the Lake Shore Railroad in the Toledo district would be Toledo and East Toledo. The rate from Lima was less than from Toledo.

11035 Q. Now, Mr. Kallman, taking up the subject of the application of State tariffs to transportation that starts in one State and ends in another, where the State tariffs apply, say for transportation entirely within that State, did you have any other rate sheets or State tariffs than these upon oil that were used?—A. Yes, sir.

Q. How many?—A. Hundreds, thousands.

Q. Did your road have any other State tariffs on other commodities than oil that contained the statement "Not to be posted?" A. They all contained that statement.

Q. All of them?—A. Yes, sir, at that time.

Q. On all commodities?—A. Yes, sir.

Q. And how were those State tariffs on other commodities than petroleum and its products kept in the stations?—A. All in the same way.

Q. In the same way as these oil tariffs?—A. Yes, sir; no difference.

Q. How were they printed or made, in what form?—A. The rate sheets, as they were called at that time, were prepared in skeleton form, certain printed mater on them which was standard for all.

Q. A blank, so called?—A. Yes; a blank, a skeleton form or blank; the rates and the name of the commodity and the effective date and other matter essential to be inserted were inserted by typewriter. Unless otherwise provided on their face, they expired with the close

of each calendar year, and were either not renewed or renewed as circumstances indicated or required.

11036 Q. Now, were these State tariffs on other commodities made, kept, handled, made public, used, and applied in the same way as these oil tariffs?—A. Absolutely; no difference whatever.

Q. Then if these particular oil tariffs are entitled to be called secret tariffs, that is true of your State tariffs on all the commodities that you handle, is it?—A. They would fall within that category.

Q. And none of them was secret?—A. No.

Q. Now, so far as their being kept in the offices and used with shippers, was there any difference between the way those State tariffs were handled in your traffic offices and the interstate tariffs?—A. Used by the station agents?

Q. Yes.—A. No difference. All tariffs placed in the hands of our agents for waybilling purposes, whether interstate or State or what you may term them, were there for the purposes of waybilling freight. They were open to the agent for his use, to any clerk in the office if there were clerks, and there were plenty of them at Rochester and Buffalo who had occasion to refer to them in any way, shape, or form; they were open to the clerks in the general office, to the clerks in the auditor's office, to the clerks in the division freight agent's offices; and as to tariffs applying from Buffalo, they would be available in the ordinary course of business to several hundred persons. So at Rochester to a couple of hundred persons.

Q. Now, that was true just the same of these oil tariffs as it was of the other commodity tariffs?—A. All of them; no difference.

11037 Q. Now, in the distribution of them, what is called the distribution of your tariffs, what did you do? I mean where copies were made and distributed around.—A. We furnished tariffs to our agents at stations at which they apply, to the offices of the company interested, including the auditor's office and the division freight agents, general officers; and, where the tariff names rates to points off our lines, such quantities of the tariffs as the connecting lines may require; copies filed with the railroad commission; and if shippers ask for copies of the tariff and we feel that they have necessity for them they are furnished to them on application.

Q. You place them where you think they will be needed?—A. They must be placed and kept at the stations from which they apply. If a shipper asks for a tariff, and he is a shipper who has occasion to use it frequently, or it is a matter of convenience for him to have the tariff in his office rather than go to the station, we send it to him.

Q. That is true of all your tariffs?—A. Yes; all of them, State and interstate.

Q. This commodity oil tariff, this tariff of 9 cents between Rochester and Norwood, was that distributed or copies of it distributed in the same way as all your other tariffs on other commodities?—A. When I make this statement as to distribution it is a general statement. There is very little distribution of State tariffs now, or prior to An-

gust 28, 1906. In answering your question as to the distribution of the oil sheets or rate orders, there was no more and no less distribution of them than would apply as to all other commodities from Rochester to the same points.

11038 Q. There would not be the requirement of the same amount of distribution of a tariff upon a single commodity——A. No, sir.

Q. —that there would be upon a class tariff or a tariff covering a hundred or a thousand commodities?—A. No; there would not.

Q. And you would not need the distribution of a commodity tariff, say, that named a rate from one station to one or six other stations in the same way that you would a tariff that named a rate to a hundred or a thousand stations?—A. No, sir.

Q. In your cross-examination you spoke of your roads having refused access or refused to open up your records as to your traffic within the State to the agents of the Bureau of Corporations. Was that done under legal advice of counsel of your company?—A. That was my understanding.

Q. It was on the ground that the representatives of the United States Government had no right to investigate, except to the extent that the traffic was interstate; is that the idea?—A. I believe that was one reason, but the fundamental reason, as I understand it, was that the representatives of the Department of Commerce and Labor were not clothed with proper authority.

Q. Was that because the Department of Commerce and Labor did not have anything to do with corporations carrying on transportation?—A. As to the reasons for that I can not say; I am not personally conversant with them.

Q. But you were advised by your counsel that these State rates, as used by you, were not subject to the interstate-commerce law?—A. Yes, sir.

11039 Q. And that, too, when you applied a State rate named in an unfiled tariff, a tariff not filed with the Interstate Commerce Commission at Washington, I mean, to your transportation of a commodity which either started in or was destined to some other State, provided your transportation was wholly within the State of New York?—A. Yes, sir; prior to August 28, 1906.

Mr. KELLOGG. Do you call that leading the witness, Mr. Miller?

Mr. MILLER. Why, I should, yes, now that you put up the question to me. I think it is objectionable on that ground, if the witness were not hostile to me. I think that is all. I will turn him over to you.

By Mr. KELLOGG:

Q. Do you remember of giving the Government officials any reason why you refused?—A. I was not present when the interview took place; I can not say.

Q. Now, you say you used hundreds and thousands of these rates for interstate shipments that were not filed with the Commission?—A. We used hundreds and thousands of rate sheets which were not

filed with the Interstate Commerce Commission and which were available from junction points of other railroads for the transportation of traffic which might have originated outside of the State of New York when destined to a point within it, or vice versa, and unquestionably there were hundreds and thousands of such shipments in the past twenty years since the interstate commerce law went into effect.

11040 Q. Prior to 1906, or during the year 1906, or 1905, to be a little more specific, I will be satisfied with one or two specific cases where you transported goods on a through bill of lading, interstate shipments, on a rate that was not filed with the Interstate Commerce Commission.—A. The bill of lading had nothing to do with it.

Q. Can you give me any such case?—A. Yes.

Q. Where is one?—A. I can not pick them out of my head; I have got to pick them out of my records.

Q. Well, pick them out of the records.—A. I will.

Q. I would like cases of interstate shipments on through bills of lading on a rate that was not filed with the Interstate Commerce Commission.—A. I can not comply with that, because there would be no means of locating the bill of lading to-day.

Q. Then, you don't know——A. I can undertake to do this: Produce for you records of shipments moving from one point to another within the State of New York on our railroad which, by the records of each of the connecting railroads, either originated at or were destined to a point outside of the State.

Q. Oh, yes.

Mr. MILLER. And routed by the shipper?

WITNESS. And routed by the shipper.

Q. I want a case where it was a continuous through shipment under a through bill of lading.—A. We can go to the extent of asking the initial railroad or the receiving railroad, if they have it yet, to produce the shipping order or the shipper's directions.

Q. But if you made the shipment, you know whether it was on a through bill or not, don't you?—A. It is not a case where we made the shipment.

11041 Q. You didn't make any such shipment?—A. No; it came to us from other railroads.

Mr. MILLER. I would like to have counsel state to the witness how he would distinguish a through bill of lading from one that is not a through bill of lading; for instance, on a shipment, we will say, from Olean to Burlington, Vermont, routed by the shipper from Olean to Rochester, thence to Norwood, and thence to Burlington; what counsel for the Government understands to be the difference between a local and a through bill of lading. Supposing the bill of lading or the railroad receipt which was given to the shipper contains the route over which the traffic is to pass, and the agent of the initial road signs and gives that to the shipper, is that the through bill of lading counsel refers to?

Mr. KELLOGG. Certainly it is.

Mr. MILLER. It is?

Mr. KELLOGG. Certainly it is. It names a point on another railroad in another State, which is a through bill of lading.

Mr. MILLER. If it names the route——

Mr. KELLOGG. Certainly.

Mr. MILLER. ——on a line in another State?

Mr. KELLOGG. Certainly.

By Mr. KELLOGG:

Q. Did you make any such shipments from points on your road to points in another State under any such tariff during the years 1905 or 1906?—A. I should say we did.

Q. Well, find one.—A. I will endeavor to do so.

Q. Name one now.—A. I can not.

11042 Q. Do you know of any such tariff that was used in that way now?—A. We had in effect prior to August 26, 1906, tariffs, or rate sheets, naming rates from points, certain points, on our lines to other points within the State of New York. There was nothing in the instructions to our agents to prevent the use of those tariffs on traffic originating at their stations going to points outside of New York or on traffic coming to them from connecting lines and destined to points inside the State of New York, and I undertake to say that traffic was so carried which had its origin or its destination at points which necessitated its crossing a State boundary.

Q. Name one tariff——A. I can not name one tariff.

Q. ——and name one shipment that went across the State boundary on a through bill of lading and the tariff was not filed with the Commission.—A. In the first place, I do not understand what you mean by a through bill of lading. If you will qualify your question a little I will endeavor to answer it clearly. I understand a bill of lading to be, as I stated this morning, a receipt for property and an agreement to transport it under certain conditions. There is no such distinction, that I am aware of, in the transportation business between a bill of lading, a local bill of lading, and a through bill of lading. It is a bill of lading.

Q. A bill of lading, then, that provides for a shipment from a place in New York to a place in Pennsylvania or some other State——A. Yes, sir; and which does not name any joint rate——

Q. Yes, sir.—A.——and there being no joint rate in force over the route designated by the shipper, I will undertake to produce to you shipments transported over our lines which were

11043 transported under State rates.

Q. Not filed with the Commission?—A. Not filed with the Commission.

Q. All right, sir. During 1905 and 1906?—A. Yes, sir.

Q. All right.

Mr. MILLER. And every other year, too?

WITNESS. Other years, too.

Q. It was for that exact transaction that your road was indicted, was it not?—A. Yes, sir.

Q. And convicted?

Mr. MILLER. You are not getting this for the purpose of indicting them again, are you?

Mr. KELLOGG. No; I ask him if it was the same kind of a case.

Mr. MILLER. Or to bother shippers?

Mr. KELLOGG. I want to get at the facts of this case, to show an illegal transaction, if there was any.

Mr. MILLER. Whether legal or illegal, it was the practice of all of the railroads under the advice of their counsel.

Q. You stated that there were reasons why the New York, New Haven & Hartford and the other New England roads might refuse to pro rate. Those reasons might be that they could get more out of the local rates than they could out of their proportion of the through rates?—A. Yes, sir.

Q. Do you know that they did get more out of the local rates?—A. I don't know.

Q. Isn't it a fact they got less out of the local rates?—A. I don't know.

11044 Q. Then you simply say that might be a reason, if it was true?—A. That is all.

Q. But if it was not true it would not be a reason?—A. Certainly not. [Laughing.]

Mr. MILLER. That is a very important difference.

11045 H. C. MARTIN, recalled:

Mr. MILLER. Mr. Martin was a witness who was called in Chicago, and upon cross-examination he was asked by counsel for the Government to produce certain division sheets applicable to the Grand Trunk Tariff I. C. C. No. 944, and it was there sai[illegible] think concurred in, that he might do that in New York at the he[illegible] here, and as he was our witness we have asked Mr. Martin to appear here, and so he is here in response to that request of the Government to complete his testimony.

By Mr. KELLOGG:

Q. Have you the division sheets with you?—A. I have.

Q. Let me see them.—A. (Producing papers and handing same to Mr. Kellogg.) That is the one in 1903, Mr. Kellogg, and was superseded by this division sheet. I might explain, so you will further understand, just one point: That these were issued in connection with Detroit & Toledo Shore Line Railroad, and that 1903 was absolutely new issue, the Shore Line having been completed just before that was issued, it being an entirely new road.

Q. Well, these are simply general percentages?—A. They apply on all classes of traffic, all classes of merchandise as well as oil.

Q. Unless there is a restriction?—A. There is no restriction, Mr. Kellogg.

Q. There is nothing said in these percentage sheets about oil traffic at all?—A. No, sir.

Q. Not a word?—A. No, sir.

Q. Now, did you inquire to find out whether the New
11046 England roads, during the years prior to 1906, did accept or were willing to accept these percentages on oil?—A. I did not make any inquiries, Mr. Kellogg, because of the fact that I have in my records at the office nothing in the shape of any restrictions of that character.

Q. Well, you don't know that the Grand Trunk Railroad hasn't such restrictions?—A. I could not say positively, but I can say from my own knowledge that I have never heard of such a restriction.

Q. Well, let us see. Did you ever ship any oil from Toledo on these percentages, prior to 1906, into New England?—A. I could not tell you that, as I stated the other day. I haven't anything to do with the traffic returns.

Q. Did the New England roads ever accept these percentages on any oil traffic out of Toledo with the Grand Trunk Railroad?—A. As I say, I could not give you definite advice on that, but this fact remains, that the tariff that was issued is in effect, and under the rulings of the Commission that tariff could not to-day be made effective or could not have remained in effect if the other roads had filed a nonconcurrence in that tariff, refusing to accept their pro rata proportion of those rates.

Q. But you do not file your division sheets at all with the Commission?—A. The division hasn't anything to do with it. It is the effectiveness of the rate. I say the tariff could not have remained in effect if they had filed such notice of nonconcurrence.

Q. There is no evidence that it had any such effect. Now,
11047 as I understand——

Mr. MARTYN. Counsel does not mean to say by that that there is evidence of the cancellation of it?

Mr. KELLOGG. I mean there was no such tariff that ever had any such effect at all.

Q. Now, did you make any inquiries, as I requested you, of any shipments——

Mr. MILLER. May I interpose an objection? I want to interpose an objection to counsel's statement. Counsel is not a witness in the case, and the only way he can make a statement is to take the witness' place, so as to give us an opportunity to cross-examine him. And I move to strike out the statement that this tariff was never effective.

Q. Did you make any inquiries, as I requested you, to find out if the Grand Trunk road had ever made any shipments under that tariff from Toledo?—A. I have not yet, Mr. Kellogg; I have not had any opportunity to do so.

Q. Well, you have had an opportunity to come from Chicago to New York since the last hearing, haven't you?—A. I have.

Q. You were on the stand nearly a week ago, weren't you?—A. A week ago to-day.

Mr. MILLER. I object to that.

Q. When are you going to find out about that?

Mr. MILLER. Wait a moment. Now, let me object. As I understand it, the witness was excused from everything except the production and exhibition of the division sheets.

WITNESS. That is as I understand it.

Mr. MILLER. Otherwise, his cross-examination was com-
11048 pleted. He has done to-day precisely what he was requested to do at the time of the little incident of his being subpœnaed while still in attendance as a witness. What took place then was that he was requested to produce these percentage sheets, and I do not think counsel ought to assume something else was requested of him. If he wants to request something else of him, that is another question.

Mr. KELLOGG. As I recall it, I did request of him that information. I think the record will show it, Mr. Miller. And I again request this witness to find out what shipments were made out of Toledo under that tariff, which, as I recollect, took effect in December, as you say, 1905.

Mr. DURAND. 1904.

Mr. KELLOGG. December, 1904. What shipments were made under that tariff from Toledo to New England points?

Mr. MILLER. Is that within your knowledge, Mr. Martin?

WITNESS. It is not.

Mr. MILLER. Is it in your office, under your control?

WITNESS. It is not; no, sir. I have no jurisdiction whatever over any traffic returns, and I have no access to any such records. It would have to be entirely with the knowledge and consent of the other officers of the road that had charge of that department. I get no billing reference in any way whatever in my office.

Mr. MILLER. I submit, then, that that is no portion of the proper cross-examination of this witness.

Q. Will you inquire of your other officials and find out whether we can have that information, and then produce it, Mr. Martin?

11049 Mr. MILLER. I object to that on the same ground, that it is not proper cross-examination of this witness.

Mr. KELLOGG. I think it depends upon the question whether this rate was really in effect, and that is the reason I want it. If no shipments were ever made under it and it was not quoted to shippers——

Mr. MILLER. The question of whether it was quoted to shippers is a different thing.

Mr. KELLOGG. And if shipments were made at a higher rate we want to find it out.

Mr. MILLER. It makes no difference whether there were shipments made under a lawful tariff or not. It does not affect the validity and effectiveness of the tariff. If the shippers at Toledo saw fit to avail themselves of this rate, or if they took a higher rate without knowledge of this rate, that has no bearing at all upon anything which is

in issue in this case. The question in respect to this tariff is, Was that tariff open to them? Maybe the shippers at Toledo did not care for this territory to which this tariff permitted them to ship at that rate—27 cents.

Q. Will you produce the information that I asked for, showing whether the Grand Trunk road, after December, 1904, during the year 1905 or 1906, made any shipments under that 27-cent rate to New England points from Toledo?—A. I will if I can get it. I can not answer that question, Mr. Kellogg.

Q. And what rate, if any, was charged from Toledo?—A. If I can get the information, sir, I will try and do it.

Q. All right. When are we to know?—A. Well, how soon do you want to know?

11050 Q. Right off; the quicker the better.—A. Well, I can't do it right off, because I do not expect to be at home until the latter part of this week, and then it will take me some days to find out because I have got to go out of my way to get it.

Q. Can't you write directly from here to the general freight office and find out?—A. Why, I presume—yes, I could write and find out.

Q. Couldn't you have done so a week ago when you were on the stand?—A. I will state this, Mr. Kellogg, in all fairness, that I assumed—I stated my position to you in regard to that question when you asked me in Chicago, and I, like Mr. Miller, thought you had dropped that point. I did not understand I was to do so. You did not ask me directly to do it.

Q. Didn't you say then you would have to take advice?—A. I said that in regard to those divisions. I was not talking about the tonnage at all.

Q. If you misunderstood it then, you do not misunderstand it now, do you, Mr. Martin?—A. No.

Mr. KELLOGG. Now, I would like the information. That is all.

Mr. MILLER. That is all, Mr. Martin.

11051 Mr. MILLER. Before we take up the examination of Mr. Loomis I take it that the Government puts in evidence these division sheets that they have called for and compelled the production of.

Mr. KELLOGG. I have not offered them yet.

Mr. MILLER. The rule is that where the Government calls for the production of papers and gets the production of them and examines them, as has been done here, that they go in evidence as evidence for that side.

Mr. KELLOGG. I haven't the slightest objection to their going in evidence if you want to put them in, Mr. Miller.

Mr. MILLER. We put them in, then, and ask that they go in as evidence on behalf of the Government under the rule.

Mr. KELLOGG. You can put them in as your own evidence if you want to, but not on behalf of the Government.

Mr. MILLER. We put them in under the rule.

Mr. KELLOGG. All right; put them in.

(The papers produced by the witness were marked Defendants' Exhibits 198 and 199, respectively.)

11052 DANIEL A. LOOMIS, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Please state your full name.—A. Daniel A. Loomis.

Q. Where do you reside?—A. In Burlington, Vermont.

Q. In what business are you engaged?—A. In the transportation business on Lake Champlain.

Q. With what company are you connected?—A. With the Champlain Transportation Company.

Q. What is the business of that company?—A. Transporting passengers and freight by steamboat on Lake Champlain.

Q. You have a fleet of steamers plying on Lake Champlain?—A. We have.

Q. Where are your headquarters?—A. In Burlington, Vermont.

Q. Does your company transport freight to and from Burlington?—A. We do.

Q. Are you familiar with the wharves and docks at Burlington?—A. I am; yes, sir.

Q. And with their location with respect to the freight depots of the Central Vermont and Rutland railroads at Burlington?—A. Yes, sir.

Q. If oil were to come by boat to Burlington, say, by canal boat from New York, would a wharfage charge be made to an outsider bringing in oil in such way?

Mr. KELLOGG. That is objected to.

11053 A. I know of no case where a wharfage charge would not be made.

Q. Do you know what the usual and customary charge for such wharfage rights is?—A. That varies according to the location.

Q. What would be a usual and customary charge, say for wharfage rights for landing oil in barrels, say 400 pounds a barrel?—A. It would probably range from 25 to 75 cents per ton. I think in Plattsburg, if a boat was to be landed at any of the private docks there, the charge would probably be from 50 to 60 cents a ton. I have done some wharfage on our own property there at Burlington as low as 25 cents per ton. I have no recollection of ever doing any wharfage business on oil.

Q. Can you say what in the years 1902, 1903, 1904, and 1905, would have been a fair and reasonable charge for wharfage rights in landing at Burlington?—A. I should be willing, with our own dock property there, to allow a canal boat to come alongside of our wharf, where it would not interfere with the conduct of our business, at a rate of 25 cents per ton.

Q. And during the years that I have mentioned boats might have been docked there without interfering with your business?—A. Yes, sir; they could be.

Q. Are you familiar with the cost of transfer from docks to freight stations of the Central Vermont and Rutland railroads at Burlington?—A. I am.

Q. Do you frequently have occasion to have freight so transferred?—A. Every day of the year during the season of navigation.

Q. And you have been accustomed to have freight so
11054 handled for several years past?—A. Yes, sir; of a general kind; all classes of freight.

Q. Now, during the years mentioned, what would have been a fair and reasonable charge for transferring oil in barrels of, say, 400 pounds each, from alongside dock at Burlington to cars of the Rutland Railroad, or the Central Vermont Railroad?—A. That rate would depend on the amount of traffic to be so transferred. If there was a small quantity it would not be handled at as low a rate as a large quantity.

Q. Well, suppose that oil were coming in canal-boat loads?—A. That could be handled for 5 cents a barrel by team from our dock to either the Rutland or Central Vermont Railroad.

Q. Has either of those roads rails down to any of the docks?—A. The Rutland Railroad has a side track to what is known as the South Dock. They rent that wharf to a wholesale grocer. Whether that gives them the privilege of using that side track I am unable to say, because I have no knowledge in regard to the contract between the Rutland Railroad and this wholesale grocer.

Q. But the Rutland Railroad does have its rails laid down to that dock?—A. Yes; which I assume to be for the benefit of the lessee.

Q. If an arrangement were made to transfer freight from boat at that dock to cars upon that track which comes down by the dock, would that be less than the price named?—A. Well, sir, I could not say as to that. That would depend upon whether the lessee
11055 has the sole right of handling traffic from that dock.

Q. But the actual expense of transfer, the physical work of effecting the transfer, would be less than in the other case?—A. Yes, sir; because it would not require a team.

Q. What would you estimate as the fair cost of such transfer?—A. The unloading from a canal boat and the loading into a car could probably not be accomplished for less than 2 or 3 cents a barrel.

Q. But you think it could fairly be accomplished at that price?—A. I should say so; yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Did you ever know of any oil coming to Burlington by water?—A. By what means?

Q. By water.—A. Yes, sir.

Q. When?—A. A number of years ago, probably five or six years ago.

Q. How did it come?—A. It came up the Hudson River by the Murray Line; from there it was transported over the Delaware & Hudson Railroad to Plattsburg, and thence by our steamers to Burlington.

Q. But you never knew of any oil coming from New York clear to Burlington by water, did you?—A. Not a full boat load. I have known of some cases where oil has been brought in there, with other shipments, on canal boats.

Q. From New York Harbor?—A. Why, I could not say as to that—I assume so; yes, sir.

11056 Q. A good many years ago?—A. Well, the shippers were Leonard & Ellis.

Q. What kind of oil?—A. Refined petroleum.

Q. Much of it?—A. No, not a great deal; I should say perhaps a hundred barrels in on the deck of the canal boat, which contained in the hold other groceries.

Q. Lubricating oil, wasn't it?—A. Well, I should say not. I think Leonard & Ellis were dealers both in lubricating and refined petroleum.

Q. When was this?—A. To the best of my knowledge it was six years ago, more or less.

Q. That is the only time you recall of any?—A. I have known of no case of any oil coming into Burlington by canal boat or otherwise by water within the past five or six years.

By Mr. MARTYN:

Q. Is your relation with that traffic such that you would have known if any had come in, or might it have come in without your knowing it?—A. It could very easily have come in without my knowing it. The water front in Burlington extends for a mile or a mile and a half, and traffic coming in by canal boat is of very little interest to me.

Q. It might come in without your knowing it?—A. It could very readily.

Q. Is there a great deal of traffic that comes in there by canal boat?—A. Quite a bit; yes, sir.

11057 W. T. McCULLOCH, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. MILLER:

Q. Where do you reside, Mr. McCulloch?—A. In Haworth, New Jersey.

Q. And what is your business?—A. I am auditor of freight accounts of the New York Central Railroad.

Q. It has been suggested to me that you are also mayor of the town in which you reside?—A. I am; yes, sir.

Q. Did you hold the office of auditor of freight accounts of the New York Central & Hudson River Railroad Company in the years 1904 and 1905?—A. I did.

Q. And thereafter?—A. Yes, sir.

Q. As auditor did you have anything to do with the collection of freight?—A. Yes, sir.

Q. Did you ever have any experience in the conduct of your business as auditor of your road in the collection of freight through the general auditor's office?—A. Yes, sir.

Q. Was that done in your office with any other shipper than the Standard Oil Company?—A. A great many other shippers.

Q. Was there anything, then, unusual or remarkable about it?—A. Nothing whatever.

Q. About that practice of collecting freight charges through the auditor's office instead of by the local agent at the point of shipment?—A. Nothing whatever unusual about it.

Q. What is that done for, Mr. McCulloch? Under what
11058 circumstances would that be done?—A. It is done where the shippers request us to do it as a matter of convenience; where they have their industries located along the line of the road and their general offices in some central point, for example, in New York City, and simply as a matter of convenience to them.

Q. Now, if a manufacturing company had its general office in the city of New York and had its plant at some point out in the country on your line of road, some small town, and the shipments went from the plant, you say in such a case, instead of making the payment of freight to the local agent all the time there, it is a practice on your road in many cases for that concern to pay the freight in New York City, through the general office here; is that it?—A. Exactly, sir. I could not state it better myself.

Q. A little leading, perhaps.

Mr. KELLOGG. Very leading. You are disposed to object to it yourself, are you?

Mr. MILLER. I am willing to testify that that is a fault you also possess in examining witnesses.

Q. How many shippers are there on your line of road that you know of against whom freight charges have been collected through your auditor's office?—A. I should say, approximately, there are on our books to-day in the neighborhood of fifty, not only shippers but different manufacturing concerns.

Q. Naturally, that would be where the business was considerable in each case?—A. Yes, sir.

Q. Have you a list of them?—A. I have.

Q. Have you it with you?—A. I have it in my pocket.

11059 Q. Produce it, will you, please?

(The witness produces a paper, which is marked defendants' Exhibit 200.)

Q. This paper which you produce is a list of these enterprises or manufacturing concerns or shippers to which you refer?—A. Yes, sir.

Q. And also states whether the payments or the settlements are weekly, monthly, or otherwise?—A. Yes, sir.

Mr. MILLER. I offer defendants' Exhibit 200 in evidence.

Mr. KELLOGG. This is all objected to as immaterial.

Mr. MILLER. I thought you regarded this as highly material.

Mr. MARTYN. It is not of any consequence except when the Standard Oil Company does it.

Mr. MILLER. This is an argument for a secret rate——

Mr. KELLOGG. Is it?

Mr. MILLER. If settled through the auditor's office of the road instead of paying the station agent out in the country, at the station.

Mr. KELLOGG. I suggest you look after the points on your own side of the case, Mr. Miller.

Mr. MILLER. Well, I have to look out for yours, too, or you will be up in the air.

Q. These shippers listed here, for instance, the Lyman Boys' School, I take it——A. Yes.

Q. The Westboro Hospital Institution, together with the American Ice Company, and a large number of other enterprises; is it because these shippers enjoy secret or illegal rates that they settled through your office?—A. No, sir.

11060 Q. Is there anything, then, in the fact that shippers settle for their freight charges through the auditor's office of the road that in any way indicates the secrecy of a rate or anything covert or illegitimate?—A. Nothing whatever.

Q. Or unusual?—A. Nothing whatever.

Mr. KELLOGG. You are speaking of the New York Central?

WITNESS. Yes, sir.

Q. Do you think that would be a suspicious transaction in the case of any road that saw fit to permit a large shipper to settle through the auditor's office?—A. I would not consider it as such.

Q. It is more convenient to the railroad as well as for the shipper?—A. Yes, sir.

Q. In the practice on your road are any marks made upon the waybill that indicate a settlement through the auditor's office?—A. Yes, the letters S. G. O. indicating settled through general office.

Q. Those appearing on the waybill?—A. Yes, sir; those appearing on the waybill.

Q. Take it, then, in the case of shipments by the Standard Oil Company, say, over the Pennsylvania road from Olean, where it has a refinery, or the Vacuum Oil Works have a refinery, to Rochester, the Standard Oil Company itself having its general offices in the city of New York, and a shipment also by that company of the same freight over your road from Rochester to Norwood—your general offices, I take it, are in the city of New York?—A. Yes, sir.

Q. Your office is here in the city?—A. Yes, sir; at the

11061 Grand Central Depot.

Q. And the Pennsylvania offices at Philadelphia, Pennsylvania?—A. Yes, sir.

Q. Is there any reason, in the conduct of the business between the shipper and the railroad, why the settlement through the auditor's office is preferable over settlement with the local agent, or otherwise?—A. Yes, sir; as a matter of convenience, as I first stated; not only convenience to the shipper, but it is a convenience to the railroad company.

Q. These settlements through the auditor's office, are they treated as prepaid shipments?—A. In some cases they are and in some cases they are not.

Q. It is really a credit system, isn't it?—A. It is a credit system. In some cases freight is billed collect, in which case we credit the station agent and bill the consignee; in case it is billed prepaid we credit the forwarding agent and bill the consignor.

Q. It depends on whether you are to collect from the shipper or consignee as to whether you mark it prepaid or not?—A. Yes. It does not necessarily follow that in all settlements made through the general office the bill bears the notation S. G. O.; it is only in some cases we do that. And there are some cases where we blind-bill it, too.

Q. Blind-billing is where you leave the rate off the waybill?—A. Yes, sir.

Q. Is there any occasion to put the rate on a waybill if the freight is prepaid?—A. Not necessarily.

Q. Or the collection is made through the general office?—A. Not necessarily.

11062 Q. What is the object of putting the freight rate on the waybill?—A. The object is, where it is collected at the station, to put the agent in possession of the information to collect the proper charges.

Q. That is where the agent at the terminal station is to collect the freight, he gets his rate from the waybill?—A. Yes, sir.

Q. And it is a direction for him to collect that freight?—A. Yes, because that is charged to him.

Q. Suppose the freight was prepaid at the initial station through to destination, is there any particular reason then for putting the freight rate in the waybill?—A. Yes, sir.

Q. What is that?—A. Because in that case we charge it to the forwarding agent and not to the receiving agent.

Q. But when the collection is made through the general office, then there is no occasion for putting the freight rate in the waybill?—A. There is not; no. It is not necessary, but it is shown in some cases and in other cases it is not shown.

Q. That is rather a matter of habit, isn't it—the agent putting it in?—A. A matter of habit.

Mr. MILLER. I think that is all.

(An adjournment was here taken until the morning of Thursday, October 29, 1908, at 10.30 o'clock.)

11063 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Thursday, October 29, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, pursuant to adjournment, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. Douglas Campbell, Mr. F. L. Crawford.

W. T. McCULLOCH recalled and his direct examination resumed, as follows:

By Mr. MILLER:

Q. Mr. McCulloch, I observe that in your evidence yesterday you spoke about certain waybilling on your road being what is called blind-billing. What do you mean by blind-billing?—A. Where we simply show the consignor, consignee, weight and car number, without reference to rate or extension of charges.

Q. The waybill does not show the rate or extension of charges?—A. No, sir.

Q. Did you say that traffic was carried on your railroad sometimes so blind-billed?—A. Quite a considerable portion of our tonnage is so handled to-day.

Q. And has been before?—A. Has been for a great many years.

Q. Has any traffic on your road been carried blind-billed in interstate commerce? I mean traffic from one State to another?—

11064 A. Yes, sir.

Q. Has that matter of blind-billing, or carrying the traffic blind-billed, ever been the subject of comment by any authority of the Interstate Commerce Commission?—A. Yes, sir, with Mr. Henry C. Adams. The question arose in the minds of the auditors as to whether that form of billing was legal or not, and Mr. Blauvelt, of the Erie Railroad, at the instigation of some of the rest of us, took that question up specifically with Mr. Henry C. Adams, submitting to him the form of the waybill, showing the manner in which it was made up, and the general office accounting blanks that were taken in connection with it, and he came back and said that while the Interstate Commerce Commission was not in session, he had no hesitancy in giving his opinion that it was not unlawful, particularly as the general office blanks gave reference to the rates and the extension of the charges, which could be verified any time by their examiners.

Q. Who is Mr. Henry C. Adams? What relation did he occupy to the Interstate Commerce Commission at the time of that transaction?—A. He is the statistician of the Interstate Commerce Commission.

Q. And is it he who has had to do with the establishing of the form of accounting and records of the interstate commerce railroads?—A. He is the official with whom the accounting officers deal in accounting methods in connection with interstate commerce traffic.

Q. I don't know whether I asked you yesterday or not, but
11065 I will if I did not, whether blind-billing has been resorted to on your road for the purpose of concealing the rate from any person who is entitled to know it, the public or any person entitled to know the rate?—A. No, sir.

Q. It had no such purpose?—A. No, sir.

Q. Nor did it have any such effect?—A. No, sir. The waybill is never seen by the shipper or the consignee. That is simply an accounting document.

Q. The waybill is purely a document that is inside and internal, or for the railroad's own purposes in the matter of transportation of that traffic, is it?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. What is the object of putting the rate of freight in the waybill or in the bill of lading?—A. With reference to the waybill, that is what I come in contact with. I do not know much about the bill of lading.

Q. Very well; now, take the waybill.—A. With the waybill, it is for the purpose of stating our revenue for earnings purposes, and at the same time as a charge against the agent for collection of the legal rate from the consignee or consignor.

Q. If the freight is prepaid it is usually put in, and a copy of the waybill, or the original waybill or a duplicate of it, goes to your office?—A. Yes, sir.

Q. And from that you take the rate of freight?—A. Yes, sir.

Q. If it is not prepaid it goes in the waybill to the——A. Goes in as collect.

11066 Q. It goes ahead collect, and the waybill shows the freight agent at the end—or the station agent—the rate to collect on the freight?—A. Yes, sir.

Q. And a copy of that waybill goes to your office?—A. Yes, sir.

Q. As a general thing the copies of the waybills go to the office of the freight auditor of the railroad?—A. In every case.

Q. And you usually take your rate of freight from the waybill, using the tariffs to correct that if there are any errors?—A. Yes; we revise those copies in our office to see that they correspond with the correct rate.

Q. Now, as a general practice, with the thousands of shippers on your road, the rate of freight is stated in the waybill, isn't it?—A. Yes, sir.

Q. That is the general custom?—A. Yes; I should say that is the general custom.

Q. Now, take the shipments of the Standard Oil products on your line; has not that been the general custom in that respect?—A. Yes, sir.

Q. To state in the waybill the rate of freight?—A. Yes, sir.

Q. Do you know of any exceptions?—A. Not in the shipments of oil.

Q. You say you blind-bill some traffic on your road. What is that traffic, and give us the instances?—A. Coal—bituminous coal.

Q. Bituminous coal—company coal?—A. No, sir; commercial coal.

11067 Q. On your line do you waybill that without stating any freight and state your reasons for it?—A. It originates on our Pennsylvania division, in the Clearfield bituminous district. It is coal going to tidewater via Newbury Junction, Philadelphia & Reading Railroad and Central Railroad of New Jersey to tidewater.

Q. Now, there is a reason for not stating the weight and the rate of freight in that waybill, isn't there?—A. The reason is simply, as I stated before, as a matter of convenience, as a matter of economy, and as a matter of simplicity of methods.

Q. You have a very large coal traffic from those coal mines, haven't you?—A. Yes.

Q. Where is the coal weighed?—A. The coal is weighed at our scale at a place called Avis Scales.

Q. It is not weighed when it starts from the mine, is it?—A. No, sir; it is carted down on a shipper's card waybill showing no weight.

Q. And is weighed intermediate the place of origin and the place of destination somewhere?—A. No; it is weighed right at Avis Scales before it is billed.

Q. Before it is billed?—A. Because it is billed at actual weight.

Q. Oh, it is billed at actual weight. Now, what is the convenience for not putting that in?—A. The convenience for not putting it in is that we can take 30 cars and put them on one waybill, take one total tonnage of the 30 cars, and make one extension.

11068 Q. That is a large traffic of a single commodity moving constantly from the same place?—A. Yes.

Mr. MARTYN. The same as the oil from Olean?

WITNESS. Yes.

Q. Now, it all starts from one place and practically goes to one place, doesn't it?—A. Oh, it goes to several tidewater points.

Q. On a good deal of your coal that you ship from there your waybill states the rate of freight, where it goes to promiscuous places?—A. I will not say a good deal of it. In some portion of it we do state the freight rate.

Q. That is, supposing you are shipping carloads of coal from those mines to marketing points around the State of New York or Pennsylvania?—A. From that particular district we do in a great many cases show the rate; but we do have other cases of coal, carload coal, coming from the Buffalo, Rochester & Pittsburg district, going into New England and northern New York points, where it shows no rate of freight.

Q. But, generally speaking, where you are shipping to promiscuous points—different places—in carload lots, you state the freight in the waybill, do you not?—A. Yes, sir; we do.

Q. And, generally speaking, the cases where you do not are cases where there is a very large traffic moving to one place constantly of

the same commodity, like coal?—A. No; that does not necessarily follow. We have both cases.

Q. Name another case where you blind-bill the property.—A. Well, the case I stated there—the case of the Buffalo, Rochester & Pittsburg coal.

11069 Q. Well, I know, but anything except the cial traffic?—A. We have not anything except the coal traffic.

Q. Then that is the only case you can mention where you blind-bill?—A. That is all we do, is our coal traffic, blind-bill.

Q. Your coal traffic?—A. Yes, sir.

Q. Then, in that list of something like fifty shippers on the New York Central road, whose accounts you settle through the auditor's office, with the exception of the coal shippers there—and a good many of those are coal shippers——A. Yes.

Q. The waybill shows the rate of freight?—A. It does.

Q. A large number of that fifty are in this coal traffic, are they not?—A. I could not say without referring to the list, but I don't think it is a particularly large number.

Q. I only glanced at it hastily.—A. I think there are 54 altogether on that list, and probably eight or nine of them would be coal shippers.

Q. The Morrisdale Coal Company, the Madiera Hill Company, Magee & Ellsworth, the Pickands Mather Company?—A. No; the Pickands Mather Company are not coal shippers.

Q. The Pickands Mather Company are not coal shippers?—A. No, sir; they are iron ore.

Q. Well, that moves from——A. That moves from Buffalo.

Q. That moves in large train loads, does it not?—A. Yes; large train loads.

Q. And do you have it weighed at your receiving point?—A. No, it is weighed at the docks at Buffalo.

11070 Mr. MILLER. Before it is shipped and transported by your company?

WITNESS. Yes, sir.

Q. The Pennsylvania Coal & Coke Company?—A. That is coal.

Q. The Potts Run Land Company, is that coal?—A. Yes, sir.

Q. Roch. I. & M. Company, what is that?—A. That is not coal. I don't know what it is.

Q. A number of these are coal shippers?—A. Yes, sir.

Q. But with those exceptions the waybill states the rate of freight on your line?—A. Yes, sir.

Mr. MILLER. You mean with the exception of this list?

Mr. KELLOGG. No; with the exception of the coal shippers.

Q. When did you take this matter up with Mr. Adams?—A. I have a memorandum in my pocket. If you will allow me to refer to it I will tell you the date.

Q. Certainly.—A. (Referring to memorandum.) August 3, 1907.

Q. You are not familiar with the bill of lading, you say? That does not usually come to your office?—A. Oh, no. I do not deal with it officially. I, of course, know what a bill of lading is.

Q. You say that the blind-billing does not have a tendency to keep the rate secret? Well, the blind-billing keeps it out of the local waybill, so the agent may or may not know what the rate is?—A. That is true. The agent would not know it, neither would the conductor.

Q. And the forwarding and receiving agent would not know it?—A. No, sir.

Q. To that extent it might be used as an instrument to keep
11071 it from the public; isn't that true?—A. Well, yes—from the public.

Q. In other words, each additional employee that would see the rate would be so much more publicity?—A. Sure.

Q. You mean by Mr. Adams' remark that the waybill is not illegal simply because it has not the rate of freight named in it?—A. I gathered that from his reply, that it was not an unlawful document.

Q. Not an unlawful document in and of itself?—A. Yes, sir.

Q. That is true, also, of a bill of lading, isn't it? It need not necessarily have the rate of freight in it to be a bill of lading, if the parties agree that they will ship without the rate of freight?—A. I think a bill of lading, to be an agreement or a contract, should specify the rate.

Q. It could be a contract for the shipment, and the rate be the tariff rate, without naming it in the contract, couldn't it?—A. Yes.

Q. So that if your road issued a bill of lading, naming the consignor, say at Schenectady and the consignee at Chicago, the intermediate carriers, and agreed to carry the goods, that would be a bill of lading, and it would assume that it would be the tariff rate, wouldn't it?—A. Yes.

Q. And it would be a legal bill of lading, wouldn't it?—A. I should say so.

The EXAMINER. May I ask a question?

Mr. KELLOGG. Certainly.

By the EXAMINER:

Q. What is the difference between a waybill and a bill of
11072 lading? Where do the two different documents go?—A. The bill of lading is the contract between the shipper and the railroad company to forward the freight, and the waybill is the instrument on which the freight is forwarded. That is for accounting purposes.

Q. I understand that. Now the bill of lading is delivered to the shipper?—A. Yes.

Q. And what becomes of the waybill?—A. The waybill goes to the receiving agent and stays there. It is a railroad document pure and simple—never passes out of their hands.

By Mr. KELLOGG:

Q. The bill of lading usually goes to the shipper, and is usually forwarded to the consignee, and is the consignee's authority for receiving the freight from the delivering line, isn't it?—A. Yes, sir.

Q. Now, is it customary on your line to send your tariffs to your forwarding stations and to your receiving stations, so that both agents may know the rate?—A. No, sir; it is not customary.

Q. It is not? Now, then, will your receiving station, if the freight goes forward collect, know what the rate is?—A. Oh, it may go forward prepaid for that matter.

Q. Suppose it does not? Much freight goes forward "collect freight," doesn't it?—A. Suppose it does not? We hold the forwarding agent responsible for the use of the proper rate.

Q. Don't you ship more or less freight where the rate follows it?—A. Certainly, the great proportion of it.

11073 Q. You ship more pieces of freight, freight collect at the end, than you do prepaid, do you not?—A. Yes, sir; probably 90 per cent more.

Q. Isn't it customary, as to all of your published tariffs filed with the Interstate Commerce Commission, that both agents have the tariff?—A. In some cases they supply them and in some cases they do not. It is not the general practice. The general practice on our road is to supply the forwarding agent with the tariff, so that he can correctly bill it, and my office is a check on the forwarding agent, to see that he does use the proper tariff.

Q. Isn't it a general thing that your receiving agent also has the published tariffs of your line?—A. Not in every case. He does in some cases.

Q. I do not mean in every case, but I mean generally. Isn't it the general practice?—A. No; it is not the general practice.

Q. You give a list here of some fifty shippers. There are thousands of shippers on your line, aren't there?

Mr. MILLER. That may be assumed.

A. Yes.

Q. Hundreds of thousands?—A. I would not say hundreds of thousands, but thousands of them.

Redirect examination by Mr. MILLER:

Q. In this list that was offered in evidence as defendant's Exhibit 200, of persons or concerns with whom the settlement is made

11074 through the auditor's office, I notice the Lyman School for Boys, with B. & A. after it. What does that mean—Boston & Albany?—A. That is on the Boston & Albany road; yes, sir.

Q. Where is that?—A. That is near Boston somewhere. I forget the name of the station.

Q. The Westboro Hospital; where is that?—A. That is on the Boston & Albany Railroad, too.

Q. In Massachusetts?—A. In Massachusetts.

Q. And the Prison Reformatory for Women; that is marked B. & A.?—A. That is on the Boston & Albany, too.

Q. Now, I notice the American Ice Company?—A. That is New York Central.

Q. And that is for the transportation of what?—A. Ice.

Q. And Borden's Condensed Milk Company; what commodity is transported for them?—A. Condensed milk.

Q. George C. Boldt—he is the proprietor of the Waldorf-Astoria Hotel, or some hotel?—A. Yes; that is general merchandise; just simply general merchandise that he ships up to his hotel in the Adirondacks, or, I mean, on the St. Lawrence River.

Q. The Jersey City Stock Yards?—A. That is live stock.

Q. Consigned to commission men, or to those stock yards at Jersey City?—A. It is consigned to different men doing business at those stock yards.

Q. Curtice Brothers?—A. That is switching charges at Rochester, on the Genesee Falls branch.

Q. Clark Brothers—do you remember them?—A. No; I don't recall.

11075 Q. Commissioners of the new prisons?—A. That is the State of New York, practically. It is the new prison up at Sing Sing.

Q. That is transportation of commodities to and from the prison?—A. Yes, sir.

Q. Drake & Company, who are they?—A. That is switching at Rochester.

Q. Downing & Company?—A. Those are importers here in the city of New York. It is prepaid charges on their outbound freight—import freight.

Q. Edison General Electric?—A. The General Electric Company, Schenectady?

Q. The Edison General Electric?—A. That is at Schenectady; the General Electric Company.

Q. That is on the different commodities shipped to and from their plant there?—A. Yes, sir.

Q. Federal Sugar Company?—A. That is sugar.

Q. From their refinery?—A. Yes, sir.

Q. Genesee Brewing Company?—A. That is switching charges at Rochester.

Q. Howell & Son Company?—A. Sugar.

Q. Are they sugar refiners, too?—A. Yes, sir.

Q. G. D. Harris Company?—A. That is switching charges at Rochester on coal.

Q. Harbison Walker Company?—A. That is the Harbison Walker Company of Pittsburg; all their general products, whatever they deal in, at all points on all of the road. They have several——

Q. International Paper Company?—A. That is wood pulp;

11076 shipments of wood pulp from different points in our Adirondack division.

Q. And so with the International Pulp Company, is that similar?—A. That is the same; that is pulp.

Q. Irish Brothers?—A. Coal.

Q. A. A. Low?—A. A. A. Low is simply an individual, some gentleman that lives here in New York and has a summer home in the Adirondacks. We settle his bills monthly, general merchandise and stuff going up to his camp.

Q. Madiera Hill Company?—A. Coal.

Q. R. Peale?—A. Coal.

Q. The Standard Brewing Company?—A. That is switching at Rochester.

Q. Dr. Webb?—A. That is an individual charge for general merchandise.

Q. Yawman & Erbe?—A. You have got me now. I don't know that one.

Q. The Western Union Telegraph Company?—A. That is for their material and supplies.

Q. Whitney & Kemmerer?—A. Coal.

Q. And with these, and the rest on this list, all the settlements are made, and you make the practice of making the settlement for freight charges from the auditor's office instead of through the local agent?—A. Yes, sir.

Recross-examination by Mr. KELLOGG:

Q. What sugar company was this—the Federal Sugar Company?—A. Just as it states, the Federal Sugar Refining Company, 11077 that have their refineries at Yonkers.

Q. Is that the sugar company that the New York Central road was prosecuted for within the last year or so for paying rebates to?

Mr. MILLER. I object to that—but it was not, I think.

A. You have got me. I don't know.

Q. You remember the case, don't you?

Mr. MILLER. I object to that.

A. I remember some case, but I could not say whether it was the Federal Sugar Company or not.

Q. It was some sugar company, wasn't it?—A. It was some sugar company; yes.

Q. They were convicted and paid a fine, did they?—A. That I could not say.

Q. Don't you remember? Didn't you testify?—A. Nothing more than what I—no; I did not testify.

Mr. MILLER. I object to that, and I suggest that Mr. Kellogg read up the reports on that case if he wants to satisfy his curiosity.

Q. There was a sugar company which your company were charged with paying rebates to, and convicted and paid their fine, wasn't there?—A. I believe so. I saw it in the newspapers. That is all I know about it.

Q. That was within the last year or two?—A. I could not say how long ago it was.

Q. Well, it was a short time ago?—A. I believe so.

Q. Did you settle the charges from the auditor's office in that case?

11078 Mr. MILLER. I object to that.

A. We settle through our office all the prepaid freight charges due from the Federal Sugar Refining Company. Now whether those are the charges in this particular case that the company was indicted on, I don't know.

By Mr. MILLER:

Q. They were not indicted for settlements through the auditor's office, as far as you know, were they?—A. No, sir.

Q. Now your road, Mr. McCulloch, I suppose would be willing to sell through the auditor's office for any considerable shipper where, in the opinion of the shipper and of the road, it made it more convenient or less work to do the business that way than through the local agent?—A. Yes, sir; provided they were financially responsible and satisfactory to our treasurer.

Q. Provided you were willing to trust them for the period of time, from week to week or month to month, between the intervals of settlement?—A. Yes, sir.

11079 WILLIAM R. KING, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. MARTYN:

Q. You have already been sworn and have testified in this case, Mr. King?—A. Yes, sir.

Q. How long have you been engaged in the oil business?—A. since 1883.

Q. Do you have to do with what are commonly known as tank stations?—A. Yes, sir.

Q. How long have you been familiar with tank stations?—A. For twenty years.

Q. Are you familiar with what is known as breaking bulk; that is, where shipments are received at a station in tank cars and then reshipped in less than carloads in barrels?—A. Yes, sir.

Q. How long have you been familiar with such transactions?—A. Eighteen or twenty years.

Q. Do you know the usual cost of such breaking bulk?—A. Yes, sir.

Q. Are you familiar with the Vermont territory?—A. Yes, sir; to a certain extent.

Q. You have had to do with the territory and trade in that part of the country?—A. Yes, sir; part of the time.

Q. Can you tell us what would be the reasonable cost of maintaining a proper equipment to so break bulk at, say, Burlington, Vermont, in quantities of two or three hundred cars per year,

11080 having sufficient equipment to break bulk for that amount of oil and reship it out in barrels?—A. It would cost over a half a cent.

Q. You mean half a cent a gallon?—A. Yes, sir.

Q. The actual cost for such breaking of bulk and putting the oil in condition to be shipped out would be, you think, in excess of half a cent a gallon?—A. In excess of half a cent a gallon.

Cross-examination by Mr. KELLOGG:

Q. That is, if you had to maintain a station in Burlington, Vermont, for the purpose of taking oil from tank wagons and barreling it, all the expense of that station would cost you half a cent a gallon?—A. No, sir; to deliver by tank wagons would cost me two cents a gallon.

Q. No; I am not talking about that.—A. You said taking it from tank wagons.

Q. No, sir; I did not. I say, taking it from tanks and putting it into barrels.—A. To break bulk and take from the tank and put into barrels would cost over half a cent a gallon.

Q. That is, for establishing the station, employing the labor, running the office, and everything there for simply transferring oil from tanks into barrels would cost half a cent a gallon?—A. Yes, sir.

Q. What are the items you include in that?—A. Well, there is the evaporation first. You can not do any pumping without considerable evaporation.

Q. How much do you figure for that?—A. That varies according to the atmosphere, hot or cold, or something like that; but it
11081 costs at least a quarter of one per cent, anyway, for that evaporation.

Q. A quarter of one per cent?—A. Yes, sir; it costs that actually, at least.

Q. What other items do you figure?—A. That is simply the pumping out from the tank car to the tank. There is another evaporation from pumping to the barrel fillers, and in many cases the evaporation is heavier than that. It varies according to different localities and different ways of handling, different conveniences you have at the station.

Q. What other items do you include?—A. There is the handling of the packages, etc., getting the packages in condition, handling them around ready to fill, so that a man who undertook to take a contract at half a cent would be bankrupt in a short time.

Q. I am not asking you that. I am asking you the items, Mr. King.—A. It costs you at least half a cent to do that business.

Q. I want the items that you made up to do that. You must have figured out the items, didn't you, in order to make it up?—A. We have had so many cases that we find it costs us more than half a cent.

Q. Where have you got a case where you have simply a transfer station alone?—A. I have had cases, many cases. I have got one at Wilsons Point, where we simply take it in bulk and ship it out in tank cars.

Q. You have the cost sheets, have you, made up, of running that station?—A. I have had in times past; I have not now.

11082 Q. Will you produce a cost sheet, showing the cost for a year, for making that transfer at Wilsons Point?—A. I perhaps may not be able to do it now for you.

Q. Have you got the cost sheets at Burlington, Vermont, for the transfers?—A. No; they are all included in the total cost there.

Q. In the total cost?—A. Yes, sir.

Q. That is, the total cost of running that station is half a cent a gallon?—A. No, sir; the cost of running that station is about two cents a gallon, tank wagon.

Q. That station is a station where you receive oil in tank cars and deliver it by tank wagons, isn't it?—A. Yes, sir.

Q. To a large territory?—A. Comparatively large, not so very large.

Q. And do you also do any transferring from tank cars into barrels?—A. Not direct from the tank cars. We pump it into our tanks and then from the tanks we barrel the goods.

Q. Then how do you separate the cost of barreling oil from the other cost of your station?—A. Because we figure up. We have those costs figured up, so we known exactly what it costs to fill the packages.

Q. Will you produce a cost sheet showing what it costs to fill the packages?—A. The cost of filling packages?

Q. Yes, at Burlington.—A. If our attorneys request us.

Q. How about Wilsons Point? Will you produce the cost sheet of running that station?—A. Yes, I can, if our attorneys so desire.

11083 Mr. KELLOGG. All right. That is all. I desire you to produce them.

Redirect examination by Mr. MARTYN:

Q. From your long experience in the handling of such matters do you think you are able to make a reasonably accurate estimate of the cost of such breaking of bulk?—A. It varies, you know, at different points. In a larger point it would be less than it would at a smaller point.

Q. But, under the circumstances I have mentioned, do you feel that your long experience in matters of that kind enables you to make a reasonably accurate estimate of the cost?—A. I think it would.

Q. And you think that the estimate which you have given is a conservative one?—A. Very.

By Mr. KELLOGG:

Q. Well, I request you to produce the cost sheets. When will you let us know about that?—A. As soon as I can see whether I can get them or not.

11084 FORREST M. TOWL, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Where do you live, Mr. Towl?—A. Brooklyn, New York.

Q. What is your business?—A. Civil engineer.

Q. Are you connected with the Standard Oil Company?—A. Various companies that are connected with the Standard Oil Company or have been.

Q. What particular line of business are you connected with?—A. The pumping of oil, engineering work connected with it, construction work.

Q. Are you familiar with the oil fields at Stoy, Illinois?—A. I am familiar with the general conditions out there. I have been in the northern part of the field. I have not been all through the field.

Q. Did you make any figures with reference to the location of the loading racks at Stoy, Illinois?—A. I did.

Q. Did you consider the source of supply there with reference to the most available railroad point?—A. Yes, sir.

Q. What did you find to be the most available railroad point for delivering oil collected from that field to a railroad?—A. Stoy.

Q. Have you a map or plat which shows that location?—A. Yes, sir. [Witness produces blueprints.]

Q. The map which you produce is a correct map of that field and the railroads in that vicinity?—A. Yes, sir.

11085 Q. It appears from this map that the station known as Stoy is situated on the I. S. Railroad.—A. The Indianapolis Southern Railroad.

Q. That is a part of the Illinois Central system?—A. I believe so.

Q. And how far west from Robinson is the station of Stoy?—A. Oh, about four or five miles.

Q. Now, with reference to the station at Stoy, where are the oil wells that find an outlet at Stoy?—A. They are in the shaded portion of the map.

Q. That is to say, largely west and north and south of Stoy?—A. Yes, sir.

Q. If the oil had been piped to any other place than Stoy, say, for example, to Robinson, what would have been necessary in addition to the pipes which you did lay there for that purpose?—A. There would have been a new system of piping.

Q. For about what distance?—A. About four or five miles, and at some other place for loading.

Q. Did you consider Stoy the natural outlet for the oil from that field?—A. Yes, sir.

Q. And you determined upon Stoy as the outlet for the field?—A. Yes, sir.

Q. Did you do that without regard to freight rates?—A. Yes, sir.

Q. Purely as the most available point, considering the physical conditions there, to reach a railroad; is that true?—A. At

11086 that time there was a large amount of work going on, and

there was a line from Stoy up to Martinsville—one 8-inch pipe, if I remember correctly—and I made the figures on putting other lines up there. That work, with other work, was in process of construction at that time.

Q. Was the pipe that was laid sufficient to handle all of the oil that was produced there?—A. I don't think it was. I think it was afterward reinforced by another line.

Q. And in addition to whatever the pipe could handle, there was a large surplus accumulated at Stoy?—A. Yes, sir.

Q. Which was shipped by rail?—A. Yes, sir.

Q. West of Stoy there appears on this map the C., H. & D. Railroad?—A. Yes, sir.

Q. Did you ever transport any oil over that road?—A. Yes, sir; not from the neighborhood of Stoy, but from north—above Casey.

Q. Did you experience any difficulty in shipping over that line?—A. Yes, sir; the road was in very bad condition, and it was impossible to get cars out from there in the spring and the fall of the year, when it was muddy. The road was very bad.

Q. Mr. Towl, was the fixing of Stoy as the railroad shipping point from that field done with the purpose of preferring one railroad over another?—A. It was not.

Q. What was it determined at Stoy for?—A. To get oil to the market which could not be delivered through the existing systems of pipe lines. Lines were being built to relieve the situation, both to get the oil out of the field and to supply the various refineries, and oil had to be shipped to supply the demand.

11087 Q. Have you since completed pipe lines?—A. Yes, sir.

Q. And the shipments by rail stopped when the pipe line was completed?—A. Yes, sir.

Q. Prior to that time you shipped by the most available railroad route as you considered?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. What is this oil field known as, Mr. Towl?—A. The Illinois oil field.

Q. In what counties is it situated? I want a general description of it, so we will not have to put this map in.—A. Mostly in Clark, Crawford, and Lawrence. There is a little in Cumberland and Coles.

Q. Extending almost north and south?—A. Nearly north and south.

Q. And the pipe line extends, does it, from Ridgwood in Lawrence County——A. Bridgeport.

Q. Bridgeport, is that?—A. Yes, sir.

Q. ——in Lawrence County on the B. & Southwestern road north, crossing the Illinois Central at Stoy in Crawford County, to Martinsville?—A. Martinsville.

Q. Martinsville in Clark County?—A. Yes, sir.

Q. On the Vandalia?—A. Yes.

Q. A Pennsylvania line is that?—A. Yes, sir. That is a trunk line. There are a large number of other lines.

Q. That is called a trunk line?—A. Yes, sir.

11088 Q. And your gathering lines, as they are called, extend to the various oil wells in the vicinity of the line?—A. Yes, sir.

Q. And do you have loading facilities at Bridgeport on the Baltimore & Ohio Southwestern?—A. There are loading facilities now at Bridgeport. At that time I do not believe there were. I do not believe the line between Bridgeport and Martinsville was in at that time.

Q. What year was that? I don't remember, do you?—A. 1906; June, 1906, to 1907.

Q. You do not think they were?—A. I do not believe the lower field was developed at that time.

Q. Were there loading facilities on the Vandalia at Martinsville at that time?—A. I do not think there were.

Q. Are there now?—A. I think not.

Q. Your pipe line now connects up with Whiting, Ind.?—A. Yes, sir, through other lines.

Q. But at that time the trunk line did extend from Bridgeport to Martinsville, across the Illinois Central, as I state, did it?—A. No, sir.

Q. Oh, it did not?—A. No, sir.

Q. I beg your pardon.—A. From Stoy to Martinsville there was one line in at that time.

Q. At that time?—A. Yes, sir, but from Bridgeport to Stoy, to the best of my recollection, it was not completed until after that period.

11089 Q. I notice that there is quite a large field around Stoy—a large oil field. Does that oil field also extend continuously or is it broken?—A. It is broken.

Q. And there are oil wells in the vicinity of the Vandalia road and in the vicinity of the B. & O. Southwestern road?—A. Yes, sir.

Q. About how many miles is it from Bridgeport to Stoy, and from Stoy to Martinsville?—A. Bridgeport to Stoy, I think it is 21.6 miles, as nearly as I can read from the map.

Q. And from Stoy to Martinsville, about the same?—A. 24.2.

Mr. MARTYN. I think we will put in this map.

By Mr. MILLER:

Q. Have you a drawing of that map other than the blueprint?—A. I have the tracing that this was made from.

Q. Is the tracing colored so as to show the fields there like this?—A. No, sir; but it can be colored.

Mr. MARTYN. I offer in evidence the map produced by the witness and ask that it be marked "Defendants' Exhibit 201."

(The map was so marked.)

Mr. MARTYN. I offer in evidence so much of page 139 of the Statistics of Railways in the United States for the year 1904 as com-

piled by the Interstate Commerce Commission, which book has been testified about and from in this case, under the head "Explanatory Note," which reads as follows: "In this table the names of all independent operating roads appear in alphabetical order, printed flush, while those of subsidiary roads, making either operating or financial reports, are indented, being alphabetically arranged also.

11090 It is stipulated that defendants' Exhibits 145 and 194 may be withdrawn. The mileage as shown in defendants' Exhibit 144 is as appears in the Official Railway Guide for the year 1908; the mileage, however, as shown on page 154 of the bill of complaint, is correct.

(A recess was then taken until 2 o'clock p. m.)

11091 WILLIAM E. CLEARY, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. Where do you live, Mr. Cleary?—A. Here on the Shore road, 74th street, Brooklyn.

Q. What is your business?—A. Water transportation.

Q. With what company are you connected, if any?—A. I am the New York agent of the Lake Champlain Transportation Company.

Q. What is that company?—A. It runs canal boats between here and Lake Champlain, the St. Lawrence River, Quebec, Montreal, and all intermediate points.

Q. Engaged in carrying freight?—A. Yes, sir.

Q. From New York Harbor to Montreal and intermediate points?—A. Between all the places here and there; yes, sir.

Q. How long have you been engaged in that business?—A. About twenty years.

Q. What is the route that your boats run?—A. The route is from here to Albany by the Hudson River tow, thence to Waterford, in the canal at Waterford, through the canal 66 miles to Whitehall, and then over Lake Champlain.

Q. What particular part of the business do you handle?—A. Contracting for freights and the shipping of them on boats.

Q. Contracting for shipments at specified rates?—A. Yes, sir.

11092 Q. You are familiar, then, with the rates and charges for such transportation?—A. I am.

Q. And have been during all the years you have been connected with that service?—A. Yes, sir.

Q. About what is the size of the boats that are used?—A. You mean their carrying capacity?

Q. Their carrying capacity.—A. On the Champlain Canal they carry about 150 tons, on four feet and a half of water, which is about the limit that the State allows. They allow from four feet and a half to four feet eight inches. I think it is four feet and a half now.

Q. The boats engaged in that traffic, then, as a rule, are about 150 tons capacity?—A. About 150 tons. They vary. Some carry only 140 and some will carry 170; 140 to 165 is about the way they run.

Q. What kind of commodities do you transport most largely?—A. Mostly coal; coal and lumber.

Q. What other commodities are transported by such boats, if you know?—A. Well, some general merchandise; there is some brimstone to the paper mills along the way; there are some railroad ties to the railroads; there is magnesite and asphalt to Montreal; there is sand to Montreal; quite a good deal of sand and gravel. It goes to the iron works in Montreal from points in Jersey. A good deal of clay goes to St. Johns, Canada. General freight, but there is more coal than all the rest put together.

11093 Q. What is the usual rate for the transportation of the coal by those means from New York Harbor to Burlington?—A. The rate is 90 cents to-day; 90 cents a gross ton.

Q. What has been the rate for a period of several years last past?—A. It runs from 90 cents to $1. It is sometimes lower. We have had it from 80 cents to $1.

Q. That has been the rate for a period of several years last past?—A. Yes, all these years that I have been in it.

Q. What is the usual rate on lumber?—A. About the same as coal. Well, on lumber we have carried it for $2.50 a thousand. Of course we have to handle a lot of the lumber. We put it on but we do not take it off. It makes it about equal to the coal freight. There are about two tons to the thousand feet. It is generally considered a little better than the coal freight, a very little.

Q. What is the usual price for the transportation of general merchandise between New York and Burlington?—A. In cargo lots—to Burlington, did you say?

Q. Yes, to Burlington.—A. In cargo lots it would be about $1.25. It would be a little more than coal, a very little more; you can get a little more.

Q. About $1.25 a ton for general merchandise?—A. Yes, sir. Generally, general merchandise goes by the net ton instead of gross; coal goes by gross.

Q. Have any of your boats ever carried any oil from New York Harbor to Burlington or points in that vicinity?—A. We carried little lots at various times that were put on to the coal. The coal dealer would tell us to stop at Weehawken and get a hundred or two hundred barrels of oil. That is the only way I have carried oil.

11094 Q. Can you state what would have been a fair price for the transportation of oil from New York Harbor to Burlington by this water route during the period of five or six years last past?—A. Well, we would have been glad to have got what we got on the ordinary rough freight. I suppose we would have asked about $1.25 a ton, carried it for about $1.25.

Q. About the same as on ordinary merchandise?—A. Yes.

Q. Your company would have been willing and able to handle such traffic at such a figure?—A. I would be very glad to get a load to-day at $1.25; very glad.

Q. And that same condition has prevailed for several years?—A. Oh, yes. When things are dull we are out hungry, and we would take it even for less. When things are lively, why, we are like everybody else, we are more independent. But we would take full cargoes at any time at $1.25.

Q. That would be from New York Harbor to alongside dock at Burlington?—A. Yes, sir.

Q. In your opinion would that have been a fair charge and could oil have been carried at that figure at any time during the last ten or fifteen years?—A. Yes.

Q. About how long is the transportation season?—A. From about the first of May. This year it closes the 15th of November on account of the repairs, the improvement to the canal. The ordinary time is from the first of May say to the first of December, or the 5th of May to the first of December.

Cross-examination by Mr. KELLOGG:

Q. It never has been a route for the transportation of much oil, has it?—A. No. Some individual men have carried more
11095 oil than we have. Our position was this: We were always interested in the coal, and we had a coal company connected with our transportation company. We were anxious to carry coal. We did not care much for these small lots. We left that more to the individual men who had a boat here and there.

Q. What price did you charge where you did transport any, do you remember?—A. I don't know. I never knew what we got on the oil we carried. It was contracted for on the other end, and I think—of course that don't count, but the fellow that sold the coal or that we freighted the coal for we simply accommodated by letting it go in with the coal.

Q. But that was an exceptional instance, was it?—A. Yes.

11096 G. B. FERGUSON, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MARTYN:

Q. What is your full name?—A. George B. Ferguson.

Q. Where do you reside?—A. St. Albans, Vermont.

Q. You are connected with the Vermont Central Railway?—A. I am.

Q. In what capacity?—A. Chief clerk in the general freight department.

Q. How long have you been in that position?—A. I have been chief clerk since June, 1903.

Q. Prior to that time what position did you hold?—A. Tariff and rate clerk.

Q. For how long a time?—A. From 1897 up to 1903.

Q. You have been with the road continuously either as a tariff clerk or a rate clerk or its chief clerk from 1897 down to the present time?—A. Yes, sir.

Q. Who is your immediate superior officer?—A. Mr. C. E. Dewey.

Q. What is his position?—A. General freight agent.

Q. How long has he held that position?—A. Since May, 1908.

Q. Whom did he succeed?—A. Robert L. Burnap.

Q. How long was Mr. Burnap in that position?—A. From August, 1905, up to May, 1908.

Q. And who held the position prior to Mr. Burnap's
11097 time?—A. Mr. J. E. Dalrymple.

Q. How long was he there?—A. I am not quite sure about that, but I think it was from 1902 up to August, 1905. I know he was there in 1903, but I think he started in 1902.

Q. Where is he now?—A. Winnipeg, Manitoba.

Q. He has not been in this country for some time?—A. No, sir.

Mr. KELLOGG. Who is that—Burnap?

WITNESS. Dalrymple.

Q. Have you been familiar, during all the time you have been with the Central Vermont Railway, with the rates used and quoted by that road?—A. Yes, sir.

Q. What has been the practice of that road and of other roads with which you have been familiar, if any, with regard to the use of the sum of locals where that was less than the through rate or where there was no through rate?

Mr. KELLOGG. That is objected to. Do you mean on interstate business?

Mr. MARTYN. We will come to that.

Mr. KELLOGG. Well, it is objected to as incompetent and immaterial.

A. We always used the sum of the locals, or did up to 1907, when they made a lower charge than the through rate, if one happened to be in effect.

Q. Prior to the adoption of the present interstate commerce law?—A. Yes, sir.

Mr. KELLOGG. You will have to speak louder. I can't hear a word you say.

11098 Q. What was the practice of your road, and of roads generally, so far as you are familiar with them, with regard to filing with the Interstate Commerce Commission tariffs commonly known as State tariffs; that is, tariffs naming rates merely between points in the same State?—A. We did not file them with the Interstate Commerce Commission.

Q. If such a State tariff, not filed with the Interstate Commerce Commission, was available to make the lowest combination or sum of locals, was such a tariff used?

Mr. KELLOGG. That is objected to as incompetent. The practice can not make legal a direct violation of the interstate commerce law.

A. Yes, sir.

Mr. KELLOGG. May all these questions be subject to the same objection?

Mr. MARTYN. Certainly.

Q. Was that practice indulged in regardless of whether the shipment came from or was to go into another State?—A. It was.

Q. Did you use such sum of the locals in the way you have described with respect to all shippers?—A. Yes, sir.

Q. And as to all classes of freight?—A. Yes, sir.

Q. All kinds of commodities?—A. Yes, sir.

Q. Has it been the custom of your road to issue commodity tariffs?—A. Yes, sir.

Q. In your experience in connection with the Central Vermont Railroad, have shippers frequently come to your road to ask for other or different rates than those that were in effect.

Mr. KELLOGG. That is objected to as immaterial.

A. They have.

11099 Q. And has it been your custom to issue such tariffs as occasion required?

Mr. KELLOGG. That is objected to. The tariff is the best evidence.

A. When conditions warranted we made reductions; yes.

(Paper marked "Defendants' Exhibit 202.")

Q. What points on your line in Vermont, if any, are used by jobbers as distributing points?—A. We have three: Burlington, White River Junction, and Montpelier. St. Albans is a little, but not so much as the others.

Q. I show you defendants' Exhibit 202 and ask you if that is a tariff or special-rate advice issued by your road?—A. It is.

Q. Did you have a tariff similar in nature to this with regard to jobbers at Burlington?—A. We did.

Q. Have you a copy of that tariff?—A. I have not one with me.

Q. Were you able to find one?—A. No. We have a record of it in our books up there.

Q. What was the nature of that tariff? Describe it as completely as you can.—A. It is practically the same as defendants' Exhibit 202, only the names of the jobbers in Burlington who used that rate were on the special-rate advice.

Q. Instead of the jobbers here named at White River Junction?—A. Yes, sir.

Q. Was there a larger number of jobbers at Burlington than at White River Junction?—A. A great many more.

Q. And their names generally were on the tariff?—A. Yes, sir.

Q. I notice this tariff reads, "All freight that arrives at

11100 White River over C. V. Ry. Account of White River Junction jobbers mentioned below."—A. Yes, sir.

Q. Was the policy and practice of your road to make lower rates from such distributing points where the traffic came in over your road so that you got a double haul out of it?—A. It was.

Q. And was this tariff and the tariff you have testified to with regard to Burlington tariffs made in pursuance of that policy?—A. Yes, sir.

Mr. MARTYN. I offer defendants' Exhibit 202 in evidence.

Mr. KELLOGG. Same objection.

Q. Defendants' Exhibit 202, at the upper left-hand corner, has the figures "04/44." What do those figures denote?—A. That indicates that the tariff was issued in 1904, the number after the stroke being our serial number for the issue.

Q. That means, then, that that was the 44th tariff of that character issued in that year?—A. In that year; yes, sir.

Q. And as this is dated January 1st, 1904, I suppose that would indicate that on the first of the year you issued at least 44 such tariffs?—A. Yes, sir.

(Papers marked defendants' Exhibits 203 to 206, inclusive.)

Q. I show you defendants' Exhibits 203, 204, 205, and 206. Are those tariffs or special advice issues of your road?—A. Yes, sir.

Q. Defendants' Exhibit 203 authorized a rate on "butter boxes, carload minimum 12,000 pounds. Account of Franklin County Creamery Association." Where was that association, do you know?—A. St. Albans, Vermont.

11101 Q. It purports to make a rate from East Berkshire to St. Albans. Do you know whether that creamery association has a plant at East Berkshire?—A. It has not.

Q. What was it shipping from East Berkshire to St. Albans?—A. Material and supplies used at their plant at St. Albans.

Q. What do the words "Account of Franklin County Creamery Association," in this tariff, signify?—A. That indicates that that concern took the question up with us, and for them we arranged that rate. It was our practice, whenever we issued rates of that sort and special tariffs, to show the name of the party we made the rate for, with whom we took the matter up.

Q. Was that rate equally available to any other shipper who might have occasion to ship butter boxes between those two points?—A. If they wanted to use such a rate we would give it to them; yes, sir.

Q. This tariff by its terms expires on December 31, 1904. Did the insertion of the name of the shipper upon whose application the tariff was issue, enable your department to keep track of this kind of tariffs more readily than if the name were not there?—A. That was one of the principal reasons for having it put in there.

Q. Defendants' Exhibit 204 authorizes a rate on soft pulp wood, for account of Missisquoi Pulp Company, between eight different stations named and Sheldon Springs. What sort of a concern was this pulp company, if you know?—A. They manufactured wood pulp at Sheldon Springs, Vermont.

Q. And in connection with their business they had shipments from the stations named to Sheldon Springs?—A. Yes; shipments

11102 of logs, pulp wood shipped in to Sheldon Springs.

Q. Why was the name of this concern inserted here after the words "Account of?"—A. For the same reason as on the other tariffs, so we could keep track of it readily and know whom the rate was issued for and who applied for it.

Q. The next tariff, marked "Defen nts' Exhibit 205," authorizes a rate on rough marble from Roxbu y to Swanton, issued for account of Barney Marble Company. Was that issued in the same way as the other tariffs to which you have referred?—A. Yes, sir; it was.

Q. How were these tariffs kept in your files?—A. Oh, the same as all other tariffs. We had a drawer to put them in there. We have a big cabinet. We keep them in sectional drawers.

Q. These tariffs were kept in the same manner as the other tariffs in the office?—A. Yes, sir.

Q. Accessible to the same clerks in the office?—A. Yes, sir.

Q. To what agents, if any, were copies of these tariffs sent?—A. At the shipping point and the destination.

Q. Was there anything secret about any of these tariffs?—A. Not at all.

Q. I notice on defendants' Exhibit 206, at the upper left-hand corner, the figures "04/63." That indicates that at least 63 of such tariffs had been issued, does it?—A. Yes, sir.

Q. Do you know about how many tariffs of this character you had in the year 1904?

Mr. KELLOGG. Same objection. The tariffs are the best
11103 evidence.

A. I should think 100 to 150, or such a matter.

Q. I show you a copy of petitioner's Exhibit 660–K, and ask you if this is one of the same series of tariffs as that to which you have already testified with regard to defendants' Exhibits 202 to 206?—A. It is.

Q. Issued in the same way?—A. The same manner; yes, sir.

Q. Kept in the same file?—A. Yes, sir.

Q. Distributed in the same manner?—A. To shipping point and destination; yes, sir.

Q. I notice at the bottom, after the word "To," "W. G. C." What do those initials denote?—A. That shows to whom we supplied copies of this issue.

Q. Who was "W. G. C.?"—A. W. G. Crabbe, our auditor.

Q. The next initials represent whom?—A. "W. H. L."—that is W. H. Luckett, the agent at Burlington.

Q. The next initials are those of whose name?—A. I presume that is one of our agents. I do not recall the name, though, from the initials now. "H. A. F."—let me see. That is one of the agents, but I do not remember the name now.

Q. The initials on here would indicate that a copy or copies of the tariff was sent to each one whose initials are so shown?—A. Yes, sir.

Q. I also show you copies of petitioner's Exhibits 660–G, 660–H, and 660–J, and ask you if those are all issues of your company in

like manner as the tariffs to which you have already testified?—A. They are.

Q. These were likewise issued in the same manner as the
11104 other tariffs?—A. They were.

Q. Kept in the same files——A. Yes, sir.

Q. And in the same manner?—A. Yes, sir.

Q. I now show you a copy of petitioner's Exhibit 660–C. The record in this case shows or tends to show that this is a copy of a letter or memorandum found in the general office of the Central Vermont Railway at St. Albans. I ask you if you are familiar with that?—A. Yes, sir.

Q. This was a letter from whom to whom?—A. A letter from the general freight agent addressed to the agent at Burlington.

Q. This letter reads: "You will waybill on the following basis as from February 1st, 1903;" then follows a list of points, and opposite each point is a certain number of dollars per car. What was that—a direction from your general freight agent to the agent at Burlington?—A. Those were instructions from the general freight agent to the agent at Burlington as to how he should bill shipments of oil under that schedule.

Q. Did you have a tariff naming the rates shown in these instructions, in the form of the other tariffs to which you have testified?

Mr. KELLOGG. That is objected to. The tariff itself is the best evidence.

A. I think we did, although I would not be positive about that unless I looked up the records in the office.

Q. What do the words "Handling S. O. Co. shipments from Burlington in tank cars" denote, on these instructions?—A. Handling Standard Oil Company shipments of oil.

Q. Is it your understanding that that language refers to the tariff from which these rates were taken, which showed the Standard Oil Company opposite the words "Account of," in the
11105 manner shown on these other tariffs?

Mr. KELLOGG. That is objected to. There is no evidence that there was any tariff covering that, and if there was——

Mr. MARTYN. He testified there was.

Mr. KELLOGG. No, he did not testify there was, and if there was the tariff is the best evidence. He said he didn't know whether there was or not.

Mr. MILLER. He said he thinks there was, as I understand his testimony.

Mr. KELLOGG. Let us find out about that. Did you ever see any tariffs such as is named in that rate order?

WITNESS. The one that Mr. Martyn has there?

Mr. KELLOGG. Yes.

WITNESS. I think I did.

Mr. KELLOGG. Where is it?

WITNESS. Probably in our office files at St. Albans.

Mr. KELLOGG. You are not sure that you did?

WITNESS. I can not tell, no, sir, without looking it up, but that document he has there was used in the nature of a tariff.

Q. You understand from this that there was a tariff?—A. Yes, I think there was.

Mr. KELLOGG. I will cross-examine on that later. I won't interrupt you now, Mr. Martyn.

Q. I show you petitioner's Exhibit 660–A, and ask you to examine the same. Were you familiar with the transaction there referred to?—A. I was.

11106 Q. Will you explain briefly just what that meant and involved?—A. Similar to the exhibit you just exhibited prior to that. It was a letter of instruction to the agent and practically in the form of a tariff. He was to use the charges or the rates shown in that letter there in billing those shipments from Burlington to the destination shown. As a matter of convenience to ourselves we did not in all cases haul those cars into Burlington. If we could stop them before they got in we saved an extra haul but charged the same rate, just as though we did haul them in.

Q. The rate charged, then, was the rate into Burlington and the rate from Burlington to destination?—A. Yes.

Q. The car in fact taking a short route?—A. Yes, sir.

Q. Is that an advantage to the railroad company?—A. Yes, sir; for our own convenience.

Q. And you did this for your own purposes and convenience, did you?—A. Yes, sir; solely.

Q. You have already testified that during the years in which these different tariffs appear to have been in effect, or when these different letters were written, it was the custom to use the sum of the locals. Did you consider the use of the rate into Burlington and the state tariff out of Burlington to destination, when that was less than the through rate, or if there was no through rate, a lawful rate?

Mr. KELLOGG. That is objected to as incompetent and calling for the opinion of the witness on the law. The interstate commerce law governs that.

A. We did.

11107 Mr. MILLER. This is not calling for an opinion on the law. It is calling for the fact as to the state of mind of the railroad officer at the time he did certain things. It is calling for the fact.

Mr. KELLOGG. If he knows his own state of mind, I suppose that is one thing, but it is not likely he knows the state of mind of the man that put this tariff in.

Mr. MILLER. Well, he was the rate clerk. He knows the state of mind of the rate clerk of the railroad.

Q. There is in this record a copy of a tariff purporting to make a rate from New London, Connecticut, to Burlington, Vermont, over your road of 12 cents a hundred on oil in carloads. Were you familiar with that tariff?—A. Yes, sir.

Q. I show you a copy of petitioner's Exhibit 660–I, purporting to name rates from Burlington to various points on your road, and ask you, with the 12-cent tariff with which you say you are familiar and the tariff I now show you, petitioner's Exhibit 660–I, the through class rates from New London to the various destinations there shown being higher than the sum of the locals, which, in the years 1904 and 1905, you would have considered as the lawful rate and would have used?

Mr. KELLOGG. Same objection to that.

A. The combination, that is, the 12-cent rate into Burlington plus the special rates named in this exhibit here, if they were lower than the class rates.

Q. And you have testified, as I understand it, that it was your custom to so quote and use the combination of the locals with respect to all shippers and as to all classes of freight?—A. We did.

11108 Q. Now I show you petitioner's Exhibit 662–A and ask you to look at that. Does that letter involve, as you understand it, a use of the sum of the locals on shipments from New London to those destinations?—A. It does.

Q. The cars, however, not going in fact to Burlington, but being dropped off at intermediate stations?

Mr. KELLOGG. That is objected to as incompetent and immaterial.

A. Whenever we could catch the car before it got into Burlington we would drop it off at its destination without letting it go into Burlington. In some instances they got by us and got in there.

Q. What advantage was that to your road?—A. It saved the haul to Burlington and back again.

Q. And gave you the same revenue?—A. And gave us exactly the same revenue.

Q. Did you consider at the time those transactions took place that you could lawfully do that?—A. We did.

Mr. KELLOGG. That is objected to as incompetent.

Cross-examination by Mr. KELLOGG:

Q. Mr. Ferguson, I call your attention to a rate order, petitioner's Exhibit 660–C, dated February 1, 1903.

Mr. MARTYN. Where does it say rate order?

Mr. KELLOGG. Well, special order, then, petitioner's Exhibit 660–C, dated February 1, 1903, addressed to Mr. William H. Greene, agent, Burlington, Vermont: "Dear Sir: Handling S. O. Co. ship-

11109 ments from Burlington in tank cars, you will waybill on the following basis as from February 1st, 1903." Then follow several towns, with the rate per car after each, signed "General freight agent." The rate running from $10 a car up to $45 a car. Are you familiar with that document?—A. Yes, sir.

Q. That was not filed with any commission at all, was it?—A. No, sir.

Q. To whom was it given?—A. The agent at Burlington, the shipping point, our auditor, and the agents at these different destinations had copies.

Q. Is there anything on there to show that the agents at those different destinations had any copy?—A. Not on that one; no, sir.

Q. Then how do you know they had?—A. Because that was the habit that prevailed.

Q. Well, you didn't send it to them, did you?—A. Probably I did personally.

Q. Well, you don't know that you did?—A. I couldn't say now.

Q. You don't remember anything about it?—A. I can't remember.

Mr. MARTYN. In the ordinary course of business it would have been sent?

WITNESS. Yes, sir.

Mr. KELLOGG. Now, wait a moment. Don't you gentlemen get too eager about it.

Mr. MILLER. You ought to have asked that question yourself.

Q. You have no personal recollection on the subject at all, have you?—A. Only I think it went there the same as we send all other documents of similar nature.

11110 Q. Well, do you have any recollection of sending that, or a copy of it, to your agent?

Mr. MARTYN. What do you refer to as "that?"

Mr. KELLOGG. To petitioner's Exhibit 660–C.

A. I could not remember that particular issue there out of several hundred that are issued every year.

Q. I thought you said a moment ago that you thought there was a tariff covering that?—A. I think there was, now.

Q. I will call your attention to another letter, dated March 12, 1904—a year later, in which the general freight agent writes to Mr. W. H. Luckett, agent, Burlington, Vermont.

Mr. MARTYN. Is that an exhibit in the case?

Mr. KELLOGG. Yes, sir; petitioner's Exhibit 660–F, in which he says: "Effective at once, this will withdraw and cancel special order—series 1903 No. D–93," which is Exhibit 660–C, which I just showed you, is it not?—A. Yes.

Q. And it further says: "These rates will in future be covered by special rate advice."—A. Yes.

Q. Now, after looking at that, you would not say that had in the past been covered by special rate advice, would you?—A. Well, that does not necessarily follow. We had special orders out in cases where we also had these special rate advices.

Q. Well, what does that mean, where it says in the future these rates will be covered by special rate advice?—A. That would seem to indicate in this particular instance that we were going to get out a special rate advice instead of having it covered by a special order.

Q. Yes, but you did not have any tariff under that 660
11111 other than that letter?—A. I could not say as to that.

Q. Would not that indicate it?—A. It would seem that way, yes.

Q. That is what I thought. Now, that tariff 660–C, or that rate order which named those rates, applied only to the Standard Oil

Company, didn't it?—A. It was issued on account of the Standard Oil Company.

Q. Doesn't it say "Handling S. O. Co. shipments?"—A. Yes, sir.

Q. Well, it wouldn't authorize anybody else's shipments, would it?—A. If anybody else asked us we would give them the same rate.

Q. That is, you would issue another rate?—A. We would do just the same with anybody else if they asked for the rates.

Q. Did anybody else, any other oil shipper from Burlington, Vermont, have any such rates as that except the Standard Oil?—A. I don't know of any other people there shipping oil except the Standard Oil.

Mr. MARTYN. Did anybody ever ask it and not get it?

WITNESS. No one ever asked it that would not get it.

Q. Are you sure about that? Let us see about that, then.—A. To my knowledge.

Q. Oh, to your knowledge? Do you mean you know they didn't, or what?—A. I do not think that any one ever asked but what they got the same rate.

Q. What was your ordinary petroleum rate in Vermont?—A. Second class less carloads, 3rd class carloads.

Q. That is, your 2nd class was less than carloads on oil
11112 and your 3rd class was carloads?—A. In the absence of special commodity tariffs.

Q. And those tariffs were published tariffs, filed with the Interstate Commerce Commission, weren't they?—A. Not the State issues.

Q. I mean that general second class tariff was filed with the Commission, wasn't it?—A. That is not a class tariff; it is an exception to it.

Q. Well, you had a class tariff filed with the Interstate Commerce Commission, showing oil in 2nd class less than carloads, and 3rd class carloads, didn't you?—A. No, sir. I think you misunderstand that. We had an exception sheet.

Q. You had an exception sheet filed with the Interstate Commerce Commission?—A. Yes, sir.

Q. Well, that is the same thing. And you had tariffs naming the 2nd and 3rd class rates?—A. We had class rate tariffs, yes, sir.

Q. Now, those were much higher rates than this rate you gave the Standard Oil, were they not?—A. Yes, sir.

Q. Do you know Mr. Dalrymple's signature or the signature of his clerk [handing witness paper]?—A. I recognize that.

Q. Whose signature is it?—A. J. K. Smith signed Mr. Dalrymple's name there.

Q. Was he a clerk in Mr. Dalrymple's office?—A. He was.

Q. What was his position?—A. He was rate clerk at that time.

Q. I call your attention to this letter, dated June 2, 1905. "American Oil Works, Limited, Titusville, Pennsylvania. Gentlemen: Referring to your favor of the 26th ult., I enclose here-
11113 with copies of our rate sheets."

Mr. MILLER. Is this an exhibit in the case?

Mr. KELLOGG. Yes, sir; petitioner's Exhibit 808–A. "I enclose herewith copies of our rate sheets naming class rates from Rouses Point, N. Y., and White River Jct., Vermont, to all points on our line north of Windsor. On petroleum we apply over our line on less carloads 2nd and carloads 3rd class. This will unable you to arrive at rates to all points named. Yours, truly." Why didn't you tell him about your secret rates to the Standard Oil Company?

Mr. MARTYN. I object to that statement. It does not appear that there were any secret rates. On the contrary, it appears they were not secret rates, that they were available to anybody, and had the same publicity as all of the 150 other tariffs of like nature.

Mr. KELLOGG. Yes. They were in the hands of one agent at Burlington, and nobody else ever shipped on them.

Mr. MARTYN. Are you testifying, Mr. Kellogg?

Mr. KELLOGG. Were you a moment ago?

Mr. MARTYN. I was stating the record which you had misstated.

Mr. KELLOGG. I have not misstated it in the slightest degree.

A. I could not answer that unless I saw the letter inquiring for the rate.

Q. It makes no exception there, does it?—A. We probably gave him what he asked for.

Q. What did he ask for?—A. I don't know without seeing the letter.

11114 Q. He asked for rates on oil, didn't he?—A. Yes; I know that.

Q. He did not ask for the 2nd and 3rd class rates because he would know what those were, wouldn't he?

Mr. MARTYN. I object to that.

Q. He asked for rates on your road, didn't he?

Mr. MARTYN. I object to that. If the inquiry was by letter, we should have the letter.

Mr. KELLOGG. Just wait a moment. Don't get excited, Mr. Martyn. Just keep cool. This letter says——

Mr. MILLER. I will interpose an objection to the letter as not proper cross-examination and as itself incompetent.

Q. This letter says: "On petroleum oil we apply over our line * * * on less carloads 2nd and carloads 3rd class. This will enable you to arrive at rates to all points named." Then follows a large list of points on your road, does there not?—A. Yes, sir; that covers our northern division, that list of stations.

Q. It covers all of your northern division, doesn't it?—A. Yes.

Q. Now, you were actually applying for the Standard Oil much less than the 2nd and 3rd class rates, were you not, to all points on your northern division?—A. Not from Rouses Point and White River Junction.

Q. Didn't you from White River Junction apply rates much less than that?—A. Didn't have any; no, sir.

Q. Well, you applied rates from Burlington, didn't you, much less than that?—A. Yes, sir.

11115 Q. Now, what was your connection with the New York Central road?—A. We didn't have any.

Q. The Vermont Central connected through the Rutland, didn't it?—A. Yes.

Q. Where did you connect with the Rutland?—A. At that time, I think, it was Rouses Point.

Q. At Rouses Point?—A. Yes.

Q. A shipment coming from Olean, New York, via the New York Central and the Rutland road to Burlington, would come the same route as it would come from Titusville through that country, wouldn't it, if it came northern New York route?—A. It could come that way; yes, sir.

Q. And the Standard would make their shipments to the same junction point that anybody else would, shipping on that route?—A. Well, now, I——

Q. Suppose it was shipped via Norwood, New York?—A. Oh, yes; then it would come via Norwood; yes.

Q. Your route, you say, connected with the Rutland road at Rouses Point?—A. Yes, sir.

Q. And the Rutland connected with the New York Central at Norwood?—A. Yes, sir.

Q. And your line extended from Rouses Point to Burlington?—A. We covered that territory; yes, sir.

Q. You had a tank-car rate from Norwood, New York, to Burlington, in which you joined with the Rutland road, of $23 per car, hadn't you?—A. The Rutland road published such a tariff.

Q. That was a published tariff filed with the Interstate Commerce Commission, wasn't it?—A. Yes, sir.

11116 Q. Now that oil would pass through Rouses Point, wouldn't it?—A. Yes, sir.

Q. So that if you quoted to Mr. Westgate or to the American Oil Works a rate from Rouses Point, your connection, on all your northern divisions, you knew that his oil would come through Rouses Point and that the Standard Oil Company's would come through Rouses Point, didn't you?—A. It would not necessarily——

Mr. MILLER. I object to the question as unintelligible.

Q. Please answer it.—A. It would not necessarily have to come through Norwood, coming that way.

Q. Oh, not necessarily, but if it did come through Norwood?—A. If it did come through Norwood it would take those 2nd and 3rd class rates from Rouses Point.

Q. You did not quote him any other through rate from Burlington to these various stations, did you?—A. No, sir; not in that letter.

Q. Nor tell him about the Norwood rate, did you?—A. Not in that letter.

Q. Nor did you say anything to him about any rates less than the 2nd or 3rd class rate?—A. Not in that letter; no sir.

Q. Do you know that you ever did?—A. No; I do not.

Mr. MILLER. Let me see that letter, will you.

Q. Why didn't you inform him that if he wanted to distribute oil out of Burlington you would give him the same rates you gave the Standard Oil?—A. Well, I don't know as to that, but the probabilities are that his inquiry indicated that he wanted rates either via White River Junction or via Rouses Point in connection with the Rutland.

11117 Mr. MARTYN. And the letter states the rates that were in effect?

WITNESS. Yes, sir.

Q. But if he had gone back about 100 miles farther you would have given him about a quarter of these rates?—A. I could not say as to that. That would be the Rutland road that would quote from there.

Q. I show you a letter written to Mr. T. B. Westgate on May 1, 1906, from W. H. Smith, division freight agent of the Lake Shore road (it being petitioner's Exhibit 805, in two sheets), which reads as follows: "Mr. T. B. Westgate, treasurer, American Oil Works (Limited), Titusville, Pa. Dear Sir: Replying to your letter of April 21st. The present rates on oil from Titusville, Pa., to Burlington, Vt., via the Rutland R. R. are, carloads 33 cents, less carloads 40½ cents per cwt. Attached hereto you will find a copy of the Central Vermont Ry. tariff, naming rates from Burlington to points on their line. They advise they apply 2nd class on less carloads and 3rd class on carloads. Please advise just what points you desire to reach on the D. & H. and we will advise you best rates we can secure." Did you advise them that from Burlington you applied 2nd and 3rd class rates?

Mr. MILLER. I object to that. In the first place, I object to counsel reading into the record an incompetent document. There is no evidence that this witness ever saw that letter, it purports to be from an official of another railroad, and that this witness can not be asked with respect to it; it is not addressed to him.

Q. Please answer the question.—A. I don't know as to that.

11118 Q. You don't know? The document attached is your 2nd class rates, that is, the 2nd class rates from Burlington, Vermont, on Vermont Central Railroad, is it not?—A. This document shows what the 2nd class rate is from Burlington to all stations on our northern division.

Q. And also 3rd class?—A. Yes, sir.

Q. And they were very much higher rates than you were charging the Standard Oil?—A. They were higher than the special commodity rates we had in for account of the Standard Oil from Burlington.

Q. This sheet that I show you, that you said was the 2nd and 3rd class rates from Burlington, was that issued by the Vermont Central Railroad?—A. Yes, sir.

Q. Now, this states that your road advised the New York Central that those were the rates that you applied on oil out of Burlington. Did you so advise the New York Central?—A. Just a minute.

Q. Or the Lake Shore, rather.

Mr. MILLER. This letter does not state that this witness advised.

Mr. KELLOGG. No, but the company; I am talking about his company.

A. I don't know whether we advised the New York Central or the Lake Shore.

Q. You were in the traffic department at that time, in 1906, weren't you?—A. Yes, sir.

Mr. MARTYN. No such advice given that you know anything about?

WITNESS. No.

11119 Q. That is your rate sheet attached?—A. Yes; that is our rate sheet; but that can be used on all commodities, you know.

Q. Oh, certainly; but this reply is with reference to oil. It is to the American Oil Works.—A. There is nothing there to show, Mr. Kellogg, that we ever wrote any leters on that. They may have obtained that copy from one of our agents.

Q. The other letter I showed you was written by Mr. Dalrymple?—A. Yes, sir.

Q. Where would the Lake Shore obtain that? You say your company issued it.

Mr. MARTYN. The 2nd-class rate sheet?

Mr. KELLOGG. Yes, sir.

A. Why, all of our agents have those, and our New York office, I presume, had a circular that they could distribute.

Q. And they would get it from your company, wouldn't they?—A. They would get it from our company somehow or other; yes.

Q. Will you please examine your files and get the letter of the American Oil Works of the 26th of May, 1905, addressed to Mr. Dalrymple or to the Vermont Central Railroad, asking for the rates referred to in letter—petitioner's Exhibit 808–A—which I showed you?—A. I will if I can find it; but I think our correspondence files have been destroyed for 1905.

Q. What were they destroyed for?—A. We do not have storeroom space sufficient up there to keep records away back as far as that correspondence.

Q. Away back to 1905?—A. Yes, sir.

Q. Three years?—A. Yes, sir.

11120 Q. Don't you keep your correspondence for three years?—A. No, sir; not all of it, unless it is something of particular importance, and then we give it a special file number and keep that.

Q. When did you destroy this correspondence?—A. Whenever we clear out our storeroom. We keep these files until the storeroom is full and then we throw them away, say when they accumulate and the storeroom is full.

Q. When did you last clear out your storeroom?—A. I could not say as to that. I may be mistaken; it may be there, but I think the 1905 files have been destroyed.

Q. Does the correspondence of your road pile up so fast that you can not keep it three years?—A. Yes, sir.

Q. It does?—A. Yes, sir.

Q. Has that always been your custom to destroy letters every year?—A. Yes, sir.

Q. Or every two years?—A. Well, about once a year or once in eighteen months.

Q. About once in eighteen months you destroy all of your correspondence?—A. Oh, no; not all of it; all the ordinary correspondence that we do not consider of sufficient importance to make it necessary to keep.

Q. Do you think this was destroyed, or haven't you any knowledge about it?—A. I think all the files for 1905 were destroyed.

Q. All the files for 1905?—A. Yes.

Q. Will you look in the year 1906—about May, 1906—and see if you wrote the Lake Shore road at Cleveland, quoting that
11121 company the 2nd-class rates or 3rd-class rates shown in the Central Vermont rate sheet which I showed you?—A. I will. I think we can find that all right.

Q. If you find it, will you produce those letters?—A. Yes, sir. Will you let me have a memorandum of that, please?

Q. I will give you a memorandum to-night. I show you petitioner's Exhibit 806, in two sheets, which purports to be a letter written by J. E. Dalrymple. I ask you if that is his signature.—A. That is Mr. Dalrymple's signature, signed by one of the clerks in the office there.

Q. Signed by one of the clerks in the office?—A. Yes, sir.

Q. Now, does that letter not quote the 2nd and 3rd class rates from Rouses Point to Alburg and numerous other places, and also from White River Junction on your line, as being the oil rate?

Mr. MILLER. I object to that. The letter shows for itself. This witness is not shown to have ever seen the letter before or to have known of its having been written, and it is incompetent and improper to ask him.

Q. Please answer the question.—A. I presume these are the 2nd and 3rd class rates, although there is nothing on here to show that they are.

Mr. MILLER. I move to strike out the answer.

Q. Well, compare it with your rate sheet, the 2nd and 3rd class rates, and see if they are 2nd and 3rd class rates.

Mr. MILLER. I object to that. Mr. Kellogg can make that
11122 comparison himself. The rate sheet is in evidence, I take it.

Mr. KELLOGG. I am not an expert, Mr. Miller.

Mr. MILLER. Oh, yes, you are. You have been pronounced an expert here—a great mathematical expert.

Mr. MARTYN. A perfect wizard!

Mr. KELLOGG. I am glad I am something.

Mr. MILLER. You ought to be able to take two papers and compare them and find out if they are the same.

A. These are not the 2nd and 3rd class rates according to this rate sheet here.

Q. They are not? It is a different date, isn't it?—A. Yes. This was published after this letter was written, I think.

Q. Well, those were much higher rates than you were making for the Standard Oil Company?

Mr. MARTYN. I object to that. There is no evidence that he was making any rates for the Standard Oil Company between the points named in that letter.

Mr. KELLOGG. Oh, yes, there is.

Mr. MARTYN. Where is the evidence? You say oh, yes, but where is the evidence?

Mr. KELLOGG. I will show you.

Q. From Burlington, Vermont—very much less rates than you were making for them—Standard Oil Company shipments?

A. We were making lower rates from Burlington to some of these points than the rates quoted here from Rouses Point or White River Junction.

Mr. MILLER. Then, the points were not the same as in
11123 the letter.

Q. Well, your 2nd and 3rd class rates were very much higher for the same distance than you made for the Standard Oil Company, were they not?

Mr. MILLER. The commodity rates.

A. Yes; they were.

Q. Certainly. Those rates and those rate orders which you have testified to here about the Standard Oil Company are very much lower for the same distance than your 2nd and 3rd class rates, are they not?—A. Yes; but it makes a difference there. Those rates——

Q. I asked you if they are lower.

Mr. MILLER. Let the witness answer.

Q. Yes or no, and then you can make all the explanations you wish.—A. They are higher for the reason we did not get the haul in to those junctions there.

Q. Which are higher?—A. The rates from White River Junction and Rouses Point, quoted, are higher because the traffic is delivered to us by our connection at those junctions. We do not have any inbound haul on them.

Q. Your 2nd class rates apply all over your line, do they not, from every point?—A. We have 2nd class rates all over.

Q. You have 2nd class rates from Burlington and all other points on your line, haven't you?—A. Yes.

Q. On oil?—A. Well, we did have at that time.

Q. And 3rd class rates, and they apply to oil?—A. Yes.

Q. Those are your standard rates, are they not, on your line?—A. Those are the regular rates.

11124 Q. Now, what I asked you was this: If from Burlington to the points which you shipped for the Standard Oil you made rates less than those 2nd and 3rd class rates?—A. We did.

Q. That is what I supposed. Now, after 1906, after the investigation of the Bureau of Corporations, you abolished all these rates to the Standard Oil Company, didn't you?—A. No, sir.

Q. They are not in force now, are they?—A. I think some of them are.

Q. Any of them?—A. Yes, sir.

Q. They are the 5th class rate, aren't they? You charge everybody the 5th class rate, don't you?—A. Oh, I am speaking of this special commodity tariff now.

Q. I am asking you if you did not charge the Standard Oil Company and everybody else the 5th class rate.—A. In the absence of special commodity tariffs we did.

Q. Have you got any special commodity tariffs in force to-day?—A. We have.

Q. Where are they?—A. I suppose they are on file in Washington and in our office.

Q. Oh, filed with the Interstate Commerce Commission, but I mean any secret tariffs.—A. We haven't got any secret tariffs.

Mr. MILLER. I object to Mr. Kellogg testifying.

Q. Have you got any State tariffs not filed with the Interstate Commerce Commission?—A. We have.

Q. Naming a rate less than the 5th class rate to the Stand-
11125 ard Oil Company?—A. I would not be sure about that until I look at the records in the office. We have State tariffs. Whether there is any oil tariff among the tariffs or not I do not know.

Q. Didn't you, in the year 1906, put in force the 5th class rate for an oil distributing rate at Burlington?—A. We put in the 5th class rate on oil, I don't remember just what the date was, all over our line, no matter whether it was from a division point or not.

Q. Yes, all points?—A. All points.

Q. And you took out these special rate orders and rate advices about which you have been testifying, didn't you?—A. Not all of them.

Q. You didn't? Tell me one of them that is still in force.—A. I can not answer that without looking at the records of St. Albans.

11126 Q. Show me one of those rate orders from 660-C to 660-K that is now in force or has been since 1906.

Mr. MARTYN. I object to that. It appears on the face of the orders that they expired at the end of the year.

A. None of these particular issues are in effect, but others probably containing the same rates have been issued since and are now in effect.

Q. Have you since 1906 issued any special rate orders for carrying petroleum oil for the Standard Oil Company different from your rates filed with the Interstate Commerce Commission?—A. I can't answer that until I look at the records at St. Albans.

Q. You don't know whether you have or not?—A. I don't know now.

Q. You have no recollection of issuing any, have you?—A. Why yes, it seems to me that we have, one or two tariffs.

Q. Very well. Will you examine and find them if you have them?—A. I will, sir.

Q. Now, did you ever quote any of these rates named in these rate orders, to anybody except the Standard Oil Company?—A. I could not answer that. I don't recall whether we did or not.

Q. You are in the freight office, aren't you?—A. Yes, sir.

Q. The general freight office?—A. Yes, sir.

Q. That is where you have got the correspondence about rates, haven't you?—A. Yes.

Q. You have no recollection of quoting any such rates, have you?—A. I don't recollect whether we did or not.

11127 Mr. MARTYN. Have you any recollection of any inquiry?

WITNESS. No, sir, I have not.

Q. You have seen the inquiries that I have shown you, haven't you?—A. Yes.

Mr. MARTYN. From other points.

Q. Have you quoted these rates as distributing rates to anybody either in Vermont or outside of Vermont shipping in there?—A. I do not remember.

Q. These are all made I notice for the account of the Standard Oil Company and no one else; is that true?—A. The Standard Oil Company asked for commodity rates and we issued them for them.

Q. Who asked for them—what officer?—A. I don't know as to that.

Q. Mr. Felton, the general traffic manager?—A. Probably it was he, but I don't know.

Q. Now the Standard Oil Company shipped oil from New London, Connecticut, to Burlington, Vermont, on a tariff of 12 cents per hundred, did it not?—A. Yes, sir.

Q. And that was a joint tariff, or was that just a Vermont Central tariff?—A. At the time it was issued I think it was joint, but it would be local now, because we have trackage over the B. & M., between Battleboro and Windsor.

Q. In the absence of some special rate order, in distributing that oil from Burlington, your second and third class rates would apply for carloads and less than carloads, would they not?—A. In the absence of a special commodity tariff, yes.

11128 Q. Then you issued, at the request of Mr. Felton, a special rate order reading as follows, did you not: "The following special rate is authorized on petroleum oil in tank cars, account of Standard Oil Company, dated April 2, 1904;" then naming rates from Burlington to various places, among others Bethel?—A. I think those rates were in effect before that letter of Mr. Felton.

Q. What is the date of that?—A. This is April 2, 1904.

Q. This letter is March 17, 1904?—A. Yes, but you see this cancels "'04-75."

Q. Look the letter over and see if those were put in at his request.—A. I don't think they were, to take care of this New London traffic in particular.

Q. That is what he is asking for, isn't it, New London traffic?—A. I think these were established to take care of the oil that was coming via Rouse's Point, and then we used them on the oil that came from New London also.

Q. Oh, you did?—A. I think so.

Mr. MARTYN. If the learned Government counsel will read the letter, I think he will find that it does not ask that any rate be put in.

Q. "We are figuring on having for a time shipments to Bethel and Montpelier, Vermont, from New London, Connecticut. These shipments of course will be routed via the Central of Vermont. As you know, the combination rates via Burlington, to these two points are lower than the through rate, and we wish to know if this
11129 combination rate will be applied if we consign the shipments through to destination. If not, it will be necessary for us to consign to the S. O. Co., Burlington, Vermont, with instructions to reconsign. This will give you an unnecessary double haul." Now that rate order there was issued after that, wasn't it?—A. It was issued after that letter, yes.

Q. And you did apply it on such shipments?—A. Yes, sir.

Mr. MARTYN. But that was a reissue of the previous rate order?

WITNESS. Yes, sir.

Q. Were you connected with the railroad in 1899?—A. Yes, sir.

Q. Were you in the traffic department?—A. Yes, sir.

Q. Were you the chief rate clerk at that time—tariff clerk?—A. I was tariff clerk at that time.

Q. Are you the man that sent the 12-cent tariff from New London to Burlington, to the Interstate Commerce Commission?—A. I presume I was; yes.

Q. Do you remember when it was sent there it read "For the account of Standard Oil Company," and they returned it and refused to accept it?—A. I don't remember as to that. I don't think so.

Q. Did you write to the Interstate Commerce Commission and ask to withdraw it?

Mr. MARTYN. I object to that. The writing is the best evidence, if he wrote.

A. I did not do that myself that I remember of.

Q. You did not? You have no recollection of it?—A. I don't remember it.

11130 Mr. MILLER. Counsel for the Government have an Interstate Commerce Commission man here. They can produce that correspondence, if it existed. That is the best proof of it.

Mr. KELLOGG. I asked him if he remembered it.

Mr. MILLER. Whether he remembers it or not is unimportant.

Q. Prior to 1906 did your road prorate on oil shipments with other roads?

Mr. MARTYN. I object to that as not cross-examination.

A. We probably would if we were asked to.

Q. Did they, I say?—A. I don't know whether we had any—we must have had some shipments, yes, that we were prorating on.

Q. Isn't it a fact that the Central Vermont Railroad, prior to 1906, did not prorate on oil shipments with other lines of road?—A. No, sir; it is not.

Mr. MARTYN. This may be considered subject to the same objection, without my repeating it.

Q. Isn't it a fact that the only rate you prorated was that $23 a car rate from Norwood?

Mr. MARTYN. I object for the same reason. This may be understood as subject to the same objection.

Mr. KELLOGG. Yes.

A. I don't think so. I think we did have some other commodity tariffs in.

Q. But you don't remember?—A. I can't——

Q. On oil?—A. On oil; yes.

Q. From the West?—A. Yes; from western points, or Middle State points.

11131 Q. What were they?—A. I don't remember, but the tariff that was put in evidence here yesterday was one of them there, from Toledo.

Q. Did you ever see that tariff before?—A. Never, not to my knowledge, although I think I must have had it in my files up there.

Q. You never saw it until you saw it here yesterday?—A. I don't remember seeing it.

Q. You don't recollect ever quoting that tariff to anybody?—A. I don't remember quoting it.

Q. You never heard of it, did you, until yesterday?—A. I would not say as to that. I may have seen it.

Q. Have you any recollection of ever having heard of it?—A. I have no recollection.

Q. Did you prorate with the Lake Shore road from Toledo?—A. Well, we took our proportion of the—yes, we prorated.

Q. Under what tariff?—A. Well, we took our proportion of the second and third class rates.

Q. Oh, yes, but I mean on commodity rates.

Mr. MARTYN. You mean the second and third class through rates?

WITNESS. Yes, sir.

Q. Why, certainly, but I mean on commodity tariffs.—A. I don't know that they had any issue. I don't remember any; but if there was any issued.

Q. Well, you know there was not any issued, don't you?

Mr. MARTYN. Answer the question as you started to.

A. If there was any issue, we prorated.

11132 Q. But you don't know of any, do you?—A. No, sir, I do not.

Q. Do you know of any with the Pennsylvania?—A. I don't recollect any now.

Q. Did you prorate on the Boston rate of 27 cents from Toledo?—A. If there was a commodity tariff published we would.

Q. Do you know of any commodity tariff that was published?—A. I don't remember any.

Q. That is prior to 1906, I mean.—A. Yes, sir.

Q. No other company could have published a tariff over your line without your authority, could they?—A. They could not, no. They are supposed to get our authority first.

Q. And you don't know of any commodity tariff to which you gave your authority for prorating on oil prior to 1906, do you?

Mr. MARTYN. I object to that. If he gave it, the tariff is the best evidence.

Q. Do you know of any?—A. We gave authority to some of our connections to publish rates, a blanket authority. They did not have to ask us each time they wanted to.

Q. I know, but do you know of any case where you gave authority and where they did publish commodity rates on oil in which you prorated prior to 1906?—A. I don't remember any special cases where we did.

By Mr. MARTYN:

Q. How many tariffs from your various connections come into your office in a year?—A. Oh, several thousand.

Q. Do you carry them all in mind, and the rates named in
11133 all of them?—A. No, sir, that is impossible.

Q. There is nothing peculiar, then, about the fact that you do not happen to remember a particular tariff that may or may not be in your files?—A. Not at all.

11134 HERMAN H. OPPEL, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Oppel, where do you live?—A. Duluth, Minnesota.

Q. What is your business?—A. I am manager of the Folz Grocery Company.

Q. How long have you been connected with the Folz Grocery Company?—A. About two months.

Q. What was your business in 1904?—A. I was a member of the firm of C. H. Oppel & Sons.

Q. Grocers also?—A. Grocers and clothiers.

Q. In Duluth?—A. Yes, sir.

Q. And had you been so for some time before 1904?—A. Thirty-eight years.

Q. Did your firm handle kerosene oil?—A. Yes, sir.

Q. From whom prior to 1904 had you bought your oil?—A. The Standard Oil Company.

Q. Did you make a change in the early part of 1904?—A. Yes, sir.

Q. From whom did you get the oil after you made the change?—A. The Cornplanters Oil Company.

Q. They were doing business in Duluth, were they?—A. Yes, sir.

Q. Will you state how you came to change from the Standard Oil Company to the Cornplanters Oil Company?—A. They offered me inducements.

Q. Who offered you inducements?—A. The driver for the Cornplanter wagon.

11135 Q. What inducements did he offer?—A. He gave me 5 gallons with every 50 free.

Q. You mean by that that you paid him for 50 gallons and received 55; is that right?—A. Yes, sir.

Q. Thus getting 5 gallons for nothing. Do you remember what the price of oil was at that time?—A. No; I could not tell.

Q. Assuming that it was 10 cents a gallon, that 5 gallons free would be 50 cents' worth of oil for nothing, wouldn't it?—A. Yes, sir.

Q. That would be tantamount to charging you 1 cent less per gallon than what you paid, wouldn't it?—A. Yes, sir.

Q. That is, it would amount to that?—A. Yes, sir.

Q. Did you enter into that arrangement?—A. Yes; with the driver.

Q. Did you buy oil on those terms from the driver of the Cornplanters?—A. Yes, sir.

Q. For how long a period?—A. I can't just exactly state; probably a month or two.

Q. How often did you take oil from him during that period, about?—A. About once a week.

Q. And about how much each time?—A. About 50 gallons.

Q. So that this transaction that you speak of, giving you 5 gallons free on every 50, was substantially a weekly transaction, was it?—A. Just about.

Q. And was that the entire amount of oil that you bought during that period?—A. I think it was, while I was buying of him.

Q. That is what I mean. During the time that you were
11136 buying from him and getting this present of oil or this bonus of oil you were not buying from anybody else during that same time?—A. No, sir.

Q. Now, after a month or two, or whatever the time was, did you make another change?—A. Yes; I went back to the Standard.

Q. Why did you go back to the Standard?—A. We had complaints from the customers on the oil, and their service was not very good.

Q. Did the Standard offer you any inducement for you to come back?—A. No, sir.

Q. You went back because your customers complained that the oil was not satisfactory?—A. Yes; and then we could not always locate them when we needed oil.

Q. And after you went back to the Standard, you continued to buy from them, did you?—A. Yes, sir.

Cross-examination by Mr. MORRISON:

Q. Then, as I understand you, you were getting an inferior grade of oil from the Cornplanters and it did not satisfy your trade?—A. Yes, sir. I could not say whether it was or not——

Q. You thought it was cheaper, didn't you, to buy oil from the Standard at their regular price than it was to take this quality of oil with 5 gallons thrown in on every 50?—A. Yes, sir.

Q. How long had the Cornplanters been in Duluth?—A. I could not state.

Q. This arrangement that you had, you had with the driver?—A. Yes, sir.

Q. Did you ever have any talk with the manager of the
11137 Cornplanter at Duluth?—A. I don't know him.

Q. That is the only time that you ever bought of the Cornplanter, is it?—A. Yes, sir.

Q. Do you know what their brand was that they were selling you?—A. I could not tell.

Q. It went under some brand, didn't it?—A. Not as I know of.

Q. What brand were you buying of the Standard Oil Company?—A. I could not tell that either.

Q. Was it Prime White or Standard White?—A. I could not state.

Q. Haven't any idea?—A. No, sir.

Q. Did the Standard sell more than one brand in Duluth?—A. I don't know as to that.

Q. Did the Cornplanter sell more than one brand?—A. I could not state.

Q. What were you paying the Standard for oil when you quit and went to buying of the Cornplanter?—A. I could not state what the regular price was; I don't remember.

Q. Didn't you look it up before you came here?—A. No, sir.

Q. What were you paying the Cornplanter?—A. I don't remember that either.

Q. Was their price the same as the Standard's?—A. Yes.

Q. The difference then was in the 5 gallons that they threw in?—A. That was all.

Q. Do you know what they were selling to other dealers for?—A. I could not say.

Q. All you know about is that one transaction?—A. That is all.

11138 Redirect examination by Mr. CRAWFORD:

Q. When the driver of the Cornplanter came to you and offered you this bonus, he did not tell you that his oil was inferior to that of the Standard, did he?—A. No, sir.

Q. You did not buy it under the impression that it was inferior to that of the Standard, did you?—A. No, sir.

Q. It was only after it had been tested by your customers that you found that to be the case, wasn't it?—A. I probably would not know if I had not heard that complaint.

Q. You supposed you were getting an equally good grade of oil, did you not?—A. Yes, sir.

By Mr. MORRISON:

Q. As a matter of fact, you found out as I understand you that it was cheaper to buy of the Standard at their price than it was to buy of the Cornplanter, and you went back to the Standard. That is all there is to it, isn't it?—A. Cheaper to buy from the Standard?

Q. Yes. You thought it was cheaper to buy and pay their price and not get the 5 gallons than it was to deal with the Cornplanter?—A. Yes.

By Mr. CRAWFORD:

Q. That is, you mean it was cheaper because if you continued with the Cornplanter you would have lost your customers then? That is the idea?—A. Yes.

Mr. MORRISON. The oil was not as good.

11139 Q. You mean to say it was better to pay the full price to the Standard than to get the oil that your customers were dissatisfied with?—A. Sure.

Mr. MORRISON. Certainly it was cheaper.

Q. You don't mean to say the Standard price was cheaper?—A. No, sir.

Q. The nominal price was the same?—A. Yes.

Mr. MORRISON. The difference was in the grade of oil.

WITNESS. Yes, and the accommodations helped some.

Q. The Cornplanter people did not represent or admit that their oil was inferior, did they?

Mr. MORRISON. Now, that is clearly leading.

WITNESS. No, sir.

Mr. MORRISON. He has not said anything of the kind.

11140 P. C. CRENSHAW, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Your name is P. C. Crenshaw, is it not?—A. Yes, sir.

Q. Where do you live?—A. In Chicago, Illinois.

Q. You are connected there with the Standard Oil Company of Indiana, are you not?—A. Yes, sir.

Q. And what is your position?—A. General manager of the sales department.

Q. With an office in Chicago?—A. Yes, sir.

Q. Have you charge of the matter of making prices?—A. Yes, sir.

Q. When it is desired to make a change in prices at any point in the field, what is the method by which it comes about?—A. It is often the result of a general decline in the cost of crude or other conditions; sometimes brought about by local trade conditions.

Q. Well, the decision to make the change, if a change is made, where is that made—in Chicago?—A. Yes, sir.

Q. Made by you?—A. Yes, sir.

Q. Did you occupy your present position throughout the years 1902 to 1906?—A. Yes, sir.

Q. I hand you a paper which embodies a part of petitioner's Exhibit 635, setting forth the prices of oil as sold by your station at Duluth in the years 1902, '3, '4, and '5, with the margin in
11141 each instance, and some other information. Will you please look at the same? I notice that in the year 1904 in the month of April the price was 10 cents and in the month of May it was 9 cents. Do you know what was the occasion of that decline?—A. There was some reduction in our cost, but at that time our manager at Duluth reported to me that our competitor at that point was making secret concessions, which was equivalent to making a lesser price.

Mr. MORRISON. Wait a moment. That is objected to. If there was any report it is in writing and we have a right to have it, and it is hearsay anyway.

Mr. CRAWFORD. We do not offer this as proof of the fact of the concession being given. We have already proved that. We offer this as proof of the good faith of the responsible officer of the company in making the change in the price, and as to that I think it is competent.

Mr. MORRISON. Well, it is objected to.

Q. Now, will you finish your answer?—A. On advice of the concessions being made by our competitors we felt that we did not want to resort to the same methods, and reduced our price so that it would correspond with the secret prices made by the competitor, so that all of our customers would receive the same price.

Q. What was the concession which was reported to you? What was the nature of the concession?

Mr. MORRISON. I object to that answer and move to strike it out, and I make the same objection to this question.

A. I was advised that our competitor was giving 5 gallons with every 50; that is to say, they would charge 50 gallons and
11142 deliver 55 gallons. We considered that equal to a 10 per cent reduction, and as the market at that time was about 10 cents, it meant about a cent a gallon.

Q. After obtaining that report what plans did you take to verify it?—A. We very carefully investigated it before we authorized the reduction in our market.

Q. And did you become satisfied that the report was correct?—A. Yes, sir.

Q. And being so satisfied you ordered the price reduced, did you?—A. Yes, sir.

Mr. MORRISON. That is pretty leading, isn't it?

Q. Now, immediately following that, in the month of July, the price was reduced again to 8.50. Can you explain that reduction?—A. There was a reduction in the cost of the oil.

Q. That is indicated, is it not, by the fact that the margin remained substantially the same?—A. Yes, sir. There was also, of

course, a slight variation in our cost of marketing, which affects these margins.

Q. What is that?—A. There was also some variation in our cost of marketing, which affects these margins.

Q. I hand you another sheet which contains similar information in regard to the city of Minneapolis, all of which is taken from petitioner's Exhibit 635. In the beginning of 1902 it appears that the price at Minneapolis was 8 cents in January, and in February the price declined to 7½ cents. Can you explain the reason for that decline?—A. I was advised by our manager that our competitors were giving secret rebates and concessions from the market
11143 which were equivalent to half a cent a gallon reduction in price.

Mr. MORRISON. I object to that answer and move to strike it out because it is hearsay.

Mr. CRAWFORD. I make the same statement in regard to the purpose of the testimony, that it is not offered to prove the fact of the concession, but to prove the information upon which the responsible officer of the company decided to make the reduction, and as proof of his good faith.

Q. Now, go on with your answer unless you have stated it all.—A. We were losing customers as a result of the competitors making these secret prices—were so informed by the customers. After careful investigation we satisfied ourselves that the report was absolutely correct. The only redress we had, not caring to follow this method, was to lower our market to a point that would be equal to the price made by the competitor, deducting the secret rebate.

Mr. MORRISON. I object to that answer and move to strike it out, because it is hearsay and deals in conclusions.

Q. Now, will you look at the month of May, 1903. The price in the preceding month had been 9½ cents, and in May declined to 9 cents. Will you explain about that?—A. There was a reduction in the cost of the oil.

Q. How is that indicated, if in any way, upon this sheet?—A. The margin remained stationary.

Q. So that the cost to you had been reduced half a cent?—A. Yes, sir.

Q. And you reduced your price accordingly?—A. Yes, sir.

Q. Look at the month of July, 1903, where the price
11144 declined from 9 cents to 8½ cents. Can you explain the reason for that?—A. There was a reduction in the market, and also a slight change in the cost of marketing.

Q. Look at the month of February, 1905. The price declined there from 9 cents to 8½. Will you explain that change?—A. There was a reduction of 2 cents a gallon in our cost at that time.

Q. Two cents a gallon?—A. Yes, sir.

Q. And you reduced a part of that, did you?—A. Yes, sir.

Q. Now, you have testified to two sorts of changes in your prices, to two circumstances under which you reduced your prices; one

where there was a reduction in the cost to yourselves, and in which you made a corresponding, or at least some reduction, in your selling price; the other where you reduced your price on account of reports coming to you, authenticated as well as you could get them, of reductions or cuts by competitors. Now, were there any other circumstances during this period and at these cities, where you made reductions of prices?—A. No, sir.

Cross-examination by Mr. MORRISON:

Q. Mr. Crenshaw, why did you sell oil in January, 1903, for 9¼ cents at Minneapolis, and charge 12½ at Duluth?—A. These prices are made up for different grades of oil, so that the——

Q. It is exactly the same grade of oil shown by this exhibit?—A. The exhibit does not show that.

Q. Yes, the exhibit shows that. There is not any question
11145 about that. Your counsel do not claim that there is.

The EXAMINER. He is speaking about the exhibit before him, and this is an excerpt, as I understand it.

Mr. MORRISON. Yes, that is not the full exhibit. That is made for his convenience by counsel.

WITNESS. Let me have your question again, please.

The reporter read the question as follows: "Mr. Crenshaw, why did you sell oil in January, 1903, for 9¼ cents at Minneapolis and charge 12½ at Duluth?"—A. There are a great many reasons—cost of marketing, freight, and undoubtedly different competitive conditions at that point.

Q. You were making a profit on your sales in Duluth and you were losing money on your sales in Minneapolis, were you not, at that time?—A. Yes, sir.

Q. The difference amounted to 2.86 cents?—A. Yes, sir.

Q. Do you still say that you account for that in the freight and cost of marketing?

Mr. CRAWFORD. He has not said so.

Mr. MORRISON. I am asking him if he does say so.

Mr. CRAWFORD. He has not said so. You say, Does he "still" say so. He has not said so at all yet.

Mr. MORRISON. I understood him to say that exactly.

Mr. CRAWFORD. No, he added something else, very important.

WITNESS. Your former question was as to why there was a difference in the two prices?

Q. Yes.—A. But your question now is as to the difference in margin?

Q. Yes. What have you got to say about that difference in
11146 the margin? I will leave it to you to answer it as you want to.—A. The local conditions undoubtedly governed that.

Q. What were those local conditions?—A. I explained that in my direct testimony, that——

Q. Well, explain it again, if you please.—A. That the competitor made secret prices which we equaled by open market.

Q. Where were those secret prices made?—A. At the point—either Duluth or——

Q. Which point, Duluth or Minneapolis? Which was it?—A. They were made at both points at some times.

Q. At what particular time? I am talking now and asking you specifically about January, 1903.—A. I am under the impression that there were no secret prices made by the competitor at Duluth in 1903.

Q. Were there at Minneapolis in 1903?—A. Yes, sir.

Q. What do you know about that?—A. I know there were at that time at Minneapolis; yes, sir.

Q. How much were they?—A. How much were the reductions that they were making?

Q. Yes; what were the reductions?—A. They were as a rule equivalent——

Q. No, not as a rule. What were they in January, 1903?—A. How much was the competitor reducing our market?

Q. Yes.—A. If we lowered our market, we found that they were making a reduction that was equal to the amount we lowered it.

11147 Q. Oh, I am not asking you that. I am asking you whether you are willing to swear now that they were cutting their prices at all in January, 1903, in Minneapolis.—A. They probably had been doing so prior to that.

Q. I am not asking you anything about probabilities. I am asking you for your knowledge on that subject.—A. I am giving it to you.

Q. Well, have you any?—A. Yes, sir.

Q. What were they cutting them at that time?—A. They had done so prior, or the market would not have been reduced to that low point.

Q. Now, you say that simply because your market was reduced; that is all you know about it, isn't it?—A. No.

Q. Tell us what else you know about it.—A. I know that the market was reduced because of these reductions—because of these concessions on the part of the competitor.

Q. How do you know that? Give us the source of your information.—A. I had advices from our manager to that effect.

Q. What kind of advices? Letters?—A. Both orally and letters; yes, sir.

Q. Then let us get at the letters. Where are the letters?—A. I don't know.

Q. You came here from Chicago to testify on this point, didn't you?—A. I came here not entirely for that purpose; no, sir.

Q. Well, you came here from Chicago to testify?—A. I was asked to testify after I came here.

Q. Did you come here to testify or did you come here on

11148 other business?—A. I had other business here; yes, sir.

Q. You knew before you left Chicago that you were to be a witness, didn't you?—A. I knew that I might be called as a witness.

Q. Yes, and you knew that you were to be called to testify on these competitive conditions and on price conditions, didn't you?—A. Yes, sir.

Q. You have got the letters, haven't you, that you received from your manager, in your files in Chicago, upon this subject?—A. No, sir.

Q. You have not?—A. No, sir.

Q. Where are they?—A. I don't know.

Q. Can you give the contents of any letter that you ever had from your manager on these Minneapolis prices?—A. I could not give it verbatim.

Mr. CRAWFORD. Give the substance of it.

Q. Where are the letters? What has become of them?—A. I think all of our files are destroyed that far back. In fact, I know they are.

Q. Back to 1903?—A. Yes, sir.

Q. Haven't got anything?—A. No, sir.

Q. When were they destroyed?—A. I can't tell you.

Q. About when?—A. I can't tell you that.

Q. More than three years ago?—A. Oh, yes. We destroy them concurrently.

Q. When did you last see any of these letters from your manager in Minneapolis?—A. Very shortly after they were written.

11149 Q. You say you had some conversations with him?—A. Yes, sir.

Q. Where did those conversations take place?—A. Either in Minneapolis or Chicago.

Q. Which was it?—A. There were so many of them that I could not, unless you asked me some specific time, I could not very well answer you.

Q. I am confining you now to conversations with reference to your prices in Minneapolis and Duluth in the month of January, 1903.—A. I can't answer that question positively.

Q. You don't know where they took place?—A. They took place in one or the other of the places.

Q. In one or the other? Then you don't have any distinct recollection of the place where any definite conversation took place?—A. Not at that particular time.

Q. Nor as to this particular matter, have you?—A. I have a very distinct recollection of the conversation taking place, but I could not give you the date.

Q. Can you give us the place?—A. I can't give you the place; no, sir.

Q. Can you give us the State in which it took place?—A. It was either Minneapolis or Chicago.

Q. Either in Minnesota or Illinois?—A. Yes, sir.

Q. And you remember the conversation, don't you?—A. I remember the substance of it.

Q. Yes, but you can't tell when or where it took place?—A. Not to be absolutely sure.

Q. You know, don't you, that the cost of marketing and the

11150 freight charges are all shown in these margins, in your margins of profit and your margins of loss?—A. I don't know what you refer to.

Q. In figuring out your margin of profit, or in figuring out your margin of loss, if you yourself were doing it, you would take into account freight charges and the cost of marketing, wouldn't you?—A. Yes, sir.

Q. Are the freight charges greater to Duluth than they are to Minneapolis?—A. They might be under some conditions, depending on where we received the goods from. Those figures are made up from the statements we use in connection with our marketing, and they are absolutely correct, I assume; but it does not always follow that the goods would come from the same point to Minneapolis or to Duluth.

Q. They all went from the Whiting refinery, didn't they?—A. That would not follow; no, sir.

Q. Well, did they? Did your oil that you sold in Duluth come from the refinery at Whiting?—A. I don't know.

Q. Did that which you sold at Minneapolis come from your refinery at Whiting?—A. I think it did.

Q. If it did not come from your refinery at Whiting, that which you sold in Duluth, where would it come from?—A. It might have come from Cleveland.

Q. Were you shipipng oil from Cleveland to Duluth?—A. I think they were at that time.

Q. And is not your freight rate lower from Cleveland to Duluth than it is to Whiting?—A. I don't think so.

Q. Didn't you ship across the Lakes there in oil barges?—
11151 A. That I don't know.

Q. How is that?—A. I don't know as to that.

Q. You don't know?—A. I rather think we were, yes, on those figures.

Q. That gives you a lower rate than it does to Minneapolis?—A. That might be a reason for the higher margin at that point at that particular time.

Q. Was that or was not that the fact?—A. I think it was the fact; yes, sir.

Q. Did you ship oil from Whiting by boat also?—A. Some shipments have been made to Duluth by——

Q. And from Duluth across to Minneapolis by rail, weren't they?—A. Sometimes they are made that way and sometimes by rail from Whiting direct.

Q. Where a competitor cut the price and gave away 5 gallons of oil on 50, you would meet that cut, would you, even if you sold your oil at a loss?—A. Not always, but we sometimes did.

Q. You did here, didn't you?—A. Yes, sir.

Q. And you sold oil at a loss there most of the time in Minneapolis, didn't you, for the year 1902 and for the year 1903, with the exception of three months? That is right, isn't it, that during those two years you were selling at a loss in Minneapolis most of the time?—A. Yes; these figures show so.

Q. In 1904 during all but four of the months you were losing money in Duluth; but during the entire time except one month you were making money in Minneapolis. Can you account for that?—A. On account of the local conditions governing there.

Q. What do you mean by local conditions—freight?—
11152 A. No; I mean that the competitor made concessions which we were forced to meet openly.

Q. Then, as I understand you, you did that to meet concessions?—A. Yes, sir.

Q. Now, that is your only reason, isn't it?—A. Yes, sir.

Q. Freight had not anything to do with it, had it; that is to say, the freight entered into these margins?—A. Oh, yes; the freight entered into the margins.

Q. Were they cutting your prices at Lacrosse during the year 1904?—A. I am not posted as to whether they were or not.

Q. You had competition there, hadn't you?—A. I think we did have competition at that time.

Q. Who was cutting the prices in Minneapolis?—A. The Cornplanter Oil Company were the chief offenders; the Northwestern Star Oil Company, the Craig Oil Company, the Climax Oil Company. I think that is all.

Q. Who is the manager of the Cornplanter at Minneapolis?—A. A gentleman by the name of Hull, I believe.

Q. Who is the manager of the Craig Company?—A. I don't know who was at that time. I think they have since gone out of business.

Q. The Climax?—A. At that time I think it was a gentleman by the name of Ralph.

Q. Who is the manager now?—A. For the Cilimax?

Q. Yes.—A. A gentleman by the name of Teagle, I think.

Q. Who was the manager of the Star during that time?—A. A gentleman by the name of Davis.

Q. Who was cutting your price at Duluth?—A. The Cornplanter Oil Company.

11153 Mr. CRAWFORD. When?

Mr. MORRISON. During the time that he testified that he was advised that there were cuts being made at Duluth.

A. The Cornplanter Oil Company was.

Mr. CRAWFORD. Fix the time. You are talking about five different years. Ask him what time.

Q. Well, in either of the years 1902, '3, '4, and '5.

Mr. CRAWFORD. That is a large area; because he has testified—

Q. Well, we will start in with 1902, then.

Mr. CRAWFORD. All right. What part of 1902?

Q. The whole of it. Who was cutting your price in Duluth during the first three months, say, of 1902?—A. The Cornplanter Oil Company.

Q. Who was the manager there?—A. I don't think they had a manager. They had simply an agent who acted as tank-wagon

driver. Mr. Hull, of Minneapolis or St. Paul, had charge of that section, I think.

Q. Who was cutting the price in Duluth in 1903?

Mr. CRAWFORD. When—at what time in 1903?

Q. During the entire year.—A. I don't think there was much cutting being down in 1903. I don't know that there was any.

Q. How about 1904? Take the last eight months of that year.—A. The Cornplanter Oil Company.

Q. Were those cuts open cuts in the price or were they secret cuts; that is, giving 5 gallons of oil with a 50-gallon sale?—A. They
11154 were secret. They were usually made to customers of ours—customers that had been of long standing with us—and they were only apparently made to them.

Q. Who were those customers of yours to whom they made this cut? Just give us a list of them.—A. I can't give you a list at this time.

Q. Can you give us one?—A. Oh, yes; there was Oppel & Son, was one.

Mr. CRAWFORD. You mean Mr. Oppel who was just now on the stand?

Q. Who has just been on the stand?—A. Yes, sir. There were quite a number.

Q. Then, as I understand you, the character of the cut which caused you to reduce your price was such as was testified to by Mr. Oppel, who just preceded you on the witness stand?—A. That is correct.

Q. Do you have charge of the sales of oil in Minneapolis?—A. Yes, sir; general charge.

Q. General charge. Have you anything to do with the tank-wagon drivers?—A. No, sir; not directly.

Q. You do indirectly?—A. I do through our manager.

Q. You receive reports, so that you know what kind of oil and gasoline they are selling, don't you?—A. Yes, sir.

Q. Did you give any instructions that your agents or drivers at Minneapolis should sell different kinds of oil out of the same tank——A. No, sir.

Q. At the same time?—A. No, sir.

Q. Do you know whether they did that?—A. I am quite sure they did not.

11155 Q. Or gasoline?—A. I am quite sure they did not.

Q. Would that fact show up in the reports to you if it was a fact?—A. Yes, I think it would.

Q. Were you selling Headlight oil in Minneapolis in 1903?—A. The brand of Headlight oil?

Q. Yes.—A. Yes, I think we were.

Q. Were you selling Perfection oil at the same time?—A. Yes, sir.

Q. Were you selling Water White oil?—A. Yes, sir.

Q. Those are all different grades of oil——A. Yes, sir.

Q. As well as different brands?—A. Yes, sir.

Q. Have you a station in Minneapolis known as the northeast station?—A. Yes, sir.

Q. How many tanks are there there; that is, for illuminating oil?—A. Two.

Q. Were there two there in 1903 and '4?—A. My recollection is, yes.

Q. Did you sell any other grade of oil there during that period, 1903?—A. The oil you enumerated——

Q. Headlight, Perfection, and Water White.—A. Yes, I think we sold the Eocene there.

Q. Anything else?—A. You are confining yourself now to the northeast station?

Q. Yes, at the northeast station.—A. My recollection is that we only sold Perfection, Water White, and possibly Eocene at the northeast station.

Q. Did you sell any Headlight from that station?—A. I don't think so. I think Headlight was only sold in barrels at that
11156 time. I don't think we sold it from tank wagon.

Q. Did you have a separate tank for each kind of oil?—A. At the northeast station we hauled from our main station for what little Eocene we sold up there at that time.

Q. How about the other grades of oil, Water White, Perfection, and Headlight?—A. I don't think we handled Headlight at the northeast station.

Q. Are you sure you did not?—A. I am quite sure we did not, from tank wagon.

Q. From tanks?—A. From the tank wagon.

Q. Did you keep any Headlight in tanks there at the northeast station?—A. I think not.

Q. Are you sure about that?—A. That would be my best recollection.

Q. What did you keep in those tanks there?—A. At what time?

Q. What kind of oil did you keep in those two tanks?—A. At what time?

Q. In 1903.—A. My recollection is that it was Perfection and Water White.

Q. And that is all?—A. I think so.

Q. Did you have another station in Minneapolis at which you kept your Headlight oil?—A. Yes, sir.

Q. Where was that?—A. That was our main station.

(An adjournment was then taken until Friday, October 30, 1908, at 10.30 o'clock a. m.)

11157 ROOM 515, CUSTOM-HOUSE,
New York City, Friday, October 30, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, pursuant to adjournment, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. Douglas Campbell, Mr. F. L. Crawford.

LEONARD P. DORSETT, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CAMPBELL:

Q. Where do you live?—A. Washington, D. C.

Q. What is your business there?—A. I am in the automobile business, storing and repairing.

Q. Storing and repairing and selling of automobiles?—A. Yes, sir.

Q. Under what name do you do business?—A. The L. P. Dorsett Company.

Q. How long have you been in that business at Washington?—A. About eight years and a half.

Q. Since the early part of 1901?—A. Before that I was in business in Washington.

11158 Q. You have been in that same business in Washington since 1900?—A. Since 1900.

Q. In the course of your business there, do you buy and sell refined oil and gasoline?—A. Yes, sir.

Q. Prior to 1901 from whom were you buying oil and gasoline?—A. Buying from the Standard Oil Company.

Q. Exclusively?—A. Yes, sir.

Q. Do you remember that in 1901 the Independent Oil Company began doing business at Washington?—A. I do.

Q. Selling refined oil?—A. I do.

Q. And also gasoline?—A. Yes, sir.

Q. Under whose management was that company?—A. Mr. Baughman.

Q. Did he solicit your business?—A. He did.

Q. And did you transfer your trade from the Standard Oil Company to the Independent?—A. Yes, sir.

Q. What inducement, if any, did he offer you to transfer your business to that company—to the Independent Company?—A. I was to get a rebate at the end of the month, of a half cent for every gallon that I bought from him.

Q. Just what was that arrangement, Mr. Dorsett?—A. The arrangement was that the gasoline that I bought, and the oil, was to be billed at the same price as the market price which the Standard Oil Company was quoting as the market price. At the end of the month I was to get a rebate; before paying the bill a half cent for every gallon that I purchased was to be deducted from the bill.

11159 Q. And did the same arrangement apply to your purchases of refined oil?—A. Yes, sir.

Q. If I understand you, then, the arrangement was that as long as you continued to purchase your supplies from the Independent Oil

Company, you were to receive a concession of one-half cent a gallon under the Standard Oil Company's price?—A. Yes, sir.

Q. Whatever that price might be?—A. Yes, sir.

Q. Did the Independent Oil Company carry out that arrangement with you?—A. They did.

Q. And you continued to buy from them?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Mr. Baughman started the Independent Oil Company, didn't he?—A. Yes, sir.

Q. In Washington—A. Yes, sir.

Q. He had formerly been with the Standard Oil Company?—A. I don't know anything about that.

Q. Then he sold the Independent Oil Company out to the Standard Oil Company, didn't he?—A. I don't know anything about that.

Q. It went out of business, didn't it?—A. I know it went out of business.

Q. When?—A. It was along in the latter part of 1902, as I recollect.

Q. It was in business about from 1901 to 1902?—A. Yes, sir; 1901 to 1902.

Q. Now, wasn't it operated there afterward by the Standard Oil Company?—A. I could not say, because I——

11160 Q. What became of its plants?—A. I don't know that.

Q. How did it cease doing business with you?—A. It ceased doing business with me because Mr. Baughman said that he had quit the business and was going away.

Q. Didn't he tell you he had sold out to the Standard?—A. No, sir.

Q. He did not tell you that?—A. No, sir.

Q. Didn't he go back to work for the Standard?—A. I don't know that.

Q. Did you get the same kind of concessions from the Standard?—A. No, sir.

Q. Never did?—A. No, sir.

Q. Never got any concession at all?—A. No, sir; never have.

Q. You have bought ever since from the Standard?—A. Not altogether; no, sir.

Q. Are you a large purchaser f gasoline?—A. Fa'rly so; yes, sir.

Q. There are different grades of gasoline, aren't there?—A. No, sir.

Q. All gasolines are of one grade?—A. That is, the gasoline we handle is.

Q. Oh, the gasoline you handle?—A. Yes, sir.

Q. But I say, there are different grades of gasoline in the market?—A. Yes, there are different grades of gasoline.

Q. And wide differences in the price, according to the quality?—A. Well, there are higher test gasolines which they do not sell from the tank wagons. We buy from tank wagon, which is a standard grade.

11161 By Mr. CAMPBELL:

Q. This was in Washington City proper, was it not, that you were doing business?—A. Yes, sir.

Q. And you continued to buy your refined oil from the Independent Oil Company throughout the years 1901 and 1902?—A. Yes, sir.

Q. At this reduced price?—A. Yes, sir.

Q. Until they ceased doing business?—A. Yes, sir.

Q. Is that true?—A. Yes, sir.

By Mr. KELLOGG:

Q. Do you know what the Standard were selling for at the same time to other people?—A. I don't know that; no, sir.

By Mr. CAMPBELL:

Q. The gasoline which you bought from the Independent Oil Company was sold as of the same grade that you had been buying from the Standard previously?—A. Yes, sir.

11162 WALTER S. BARKER, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CAMPBELL:

Q. You live in the city of Washington, D. C.?—A. Yes, sir.

Q. And your business there is what?—A. I am in the stove and hardware business, paints and oils.

Q. Selling stoves?—A. Stoves, hardware, paints, and oils.

Q. Refined oil and gasoline?—A. Yes.

Q. You succeeded your father there in the business, did you not?—A. I did; yes, sir.

Q. And how long ago was that?—A. I succeeded him in the year 1888. Since 1863 he was in business. I followed him.

Q. Prior to 1901 were you buying all your oils and gasolines from the Standard Oil Company?—A. Yes, sir.

Q. Exclusively?—A. Yes, sir; that is, for several years before that.

Q. Did you make a change in 1901?—A. I did.

Q. From whom did you begin purchasing in that year?—A. From the Independent Oil Company.

Q. Did they make or offer you any inducement to obtain your trade?—A. Yes, sir.

Q. Will you state what that inducement was?—A. Why, they offered to make the price, both on coal oil and gasoline, half a cent less than the Standard Oil Company's price.

Q. By coal oil you mean what?—A. Refined oil.

11163 Q. For how long was that arrangement to continue?—A. Well, they stated to me that they would make the price half a cent less than the Standard, regardless of what the price might be. If the Standard would cut their price down, they would also cut theirs half a cent less.

Q. For as long a time as you should continue to buy from them?—A. There was no contract made, you know, as to time. That was the statement.

Q. No specified time?—A. No specified time; no, sir.

Q. You bought from them upon those terms, did you?—A. I did; yes, sir.

Q. And continued to buy from them upon those terms as long as they continued to do business in Washington?—A. Yes, sir.

Q. Did you take this offer of the Independent Oil Company up with the Standard Oil Company at any time?—A. Yes. I tried to buy at a less price from the Standard. I was dealing with the Standard and tried to buy from them, but they would not meet the price.

Q. Did you ask them to meet that price?—A. I did; yes, sir.

Q. And what success did you have in the effort?—A. They said they could not do it.

(Papers marked "Defendants' Exhibits 207–A, 207–B, 207–C, and 207–D.")

Q. I ask you to look at defendants' Exhibits 207–A, B, C, and D and state what those are.—A. Why, these are the tank-wagon receipts from the Independent Oil Company—this one is. Those are Independent Oil Company receipts, and some of them Standard Oil Company tank-wagon receipts. They are both here together.

11164 Q. Those are tank-wagon tickets, are they?—A. Yes, sir.

Q. Given you by the driver——A. By the driver of the tank wagon.

Q. By the driver for the Independent Oil Company or for the Standard Oil Company, as the case may be?—A. Yes, sir.

Q. Upon purchases of oil by you from their tank wagons?—A. Yes, sir.

Q. And those tickets show, do they not, the date on which the purchase was made?—A. Yes, sir.

Q. The quantity of oil purchased?—A. Yes, sir.

Q. And the price per gallon paid?—A. Yes, sir.

Q. Now, this Exhibit 207–A is a tank-wagon ticket received by you on a purchase of refined oil and gasoline on March 29, 1901, from the Independent Oil Company, is it not?—A. Yes, sir.

Q. And shows that upon that date you paid for refined oil 6½ cents a gallon, and for gasoline 7½ cents a gallon?—A. Yes, sir; that is right.

Q. And that ticket is signed by a man by the name of Simpson——A. Tank-wagon driver.

Q. ——who was tank-wagon driver for the Independent Oil Company?—A. Yes, sir.

Q. And Exhibit 207–B is a tank-wagon ticket received from the driver of the Standard Oil Company, dated March 18, 1901, and shows, does it not, that the price paid by you to the Standard Oil Company for refined oil on that date was 7 cents a gallon, and for gasoline on that date was 8 cents a gallon?—A. Yes, sir; it does.

Q. That is true, is it not?—A. Yes, sir; that is.

11165 Q. Exhibit 207–C is another tank-wagon ticket of the Independent Oil Company, dated April 30, 1901, showing that upon that date you paid the Independent Oil Company for refined oil 6 cents a gallon and for gasoline 7½ cents a gallon. Is that not so?—A. Yes, sir; that is correct.

Q. And that tank-wagon ticket is also signed by Simpson, driver at that time for the Independent Oil Company?—A. Yes, sir.

Q. Exhibit 207–D is a tank-wagon ticket of the Standard Oil Company, dated May 16, 1901, showing that upon that date you paid the Standard Oil Company for refined oil 6 cents a gallon?—A. Yes, sir.

Q. Is that true?—A. Yes, sir.

Q. So that according to these tank-wagon tickets, Mr. Barker, you were purchasing oil from the Independent Oil Company the latter part of March, 1901, for 6½ cents a gallon?—A. Yes, sir.

Q. And the Standard Oil Company's price at that time was what?—A. That is coal oil you refer to, is it?

Q. Yes.—A. 7 cents.

Q. And on March 18, the same year, according to defendants' Exhibit 207–B, you actually paid the Standard Oil Company 7 cents a gallon for refined oil?—A. If it is on that receipt there.

Q. And on April 30, 1901, while the Standard's tank wagon price was 6½ cents you were paying the Independent Oil Company 6 cents a gallon for your refined oil?—A. Yes, sir.

Mr. CAMPBELL. I offer those tickets in evidence.

11166 Cross-examination by Mr. KELLOGG:

Q. Who was Mr. Baughman?—A. Mr. Baughman was the manager of the Independent Oil Company.

Q. Formerly in the employ of the Standard Oil, was he?—A. Yes; at one time.

Q. Before he started with the Independent?—A. Yes.

Q. Was he doing business in Washington?—A. You mean for the Standard Oil Company?

Q. Yes.—A. Yes, sir; at one time he was.

Q. Did you deal with him?—A. I dealt with the Standard at that time; yes, sir.

Q. Dealt with Mr. Baughman?—A. Yes, sir; well, he was the manager.

Q. Did you have any price cuts during Mr. Baughman's time, prior to——A. No, sir.

Q. Then he started the Independent Oil Company and sold that out to the Standard, didn't he?—A. That I don't know.

Q. Well, he sold out, didn't he?—A. That I couldn't tell you, sir.

Q. He went out of business?—A. Yes, sir.

Q. Immediately after he went out of business the price went up, didn't it?—A. I don't remember now, sir, but the price varies on those products, you know.

Q. It varies a good deal, doesn't it?—A. Oh, yes.

Q. Don't you recollect that shortly after he went out the price went up?—A. Well, I could not recall; the price advanced
11167 after that I know, but about the time I could not tell you.

Q. When did he go out of business?—A. Why, 1902; I think the latter part of 1902.

Q. Now, the record in this case shows that the price went up from 6 cents in Washington in October, 1902, to 9 cents in January, 1903?—A. The price on what are you speaking of now?

Q. Aladdin illuminating oil.—A. I am sure the price advanced, but what time I could not say.

Q. It went up about 3 cents as soon as Baughman went out of business, didn't it?—A. As soon as he went out? I could not say about that. The price advanced I know.

Q. Shortly after he went out of business?—A. I don't know about shortly afterwards. I could not say that from memory. I know the price advanced.

Q. Now you say you bought of the Standard Oil Company; on the 18th of March you paid the Standard Oil Company 7 cents; on the 29th of March you paid the Independent 6½ cents?—A. Yes, sir.

Q. That is the cut you refer to of the Independent?—A. Yes, sir.

Q. Do you know a Mr. H. W. Offutt in Washington?—A. I don't know him personally. He is in the grocery business there, I presume.

Q. Yes, he is in the grocery business there, isn't he?—A. Yes, I know him.

Q. Do you know a driver of the Standard Oil by the name of Ziegler?—A. No, sir. I might know him, but not by name.

11168 Q. (Showing witness paper.) Does that look like a Standard Oil tank wagon ticket?—A. Yes, sir.

Q. That is the form they use?—A. Yes, sir.

Q. Now it appears by that ticket that on the 28th of March the Standard Oil was selling Mr. Offutt at 6½ cents, doesn't it?

Mr. CAMPBELL. One moment. I object to that as a statement of something that is not in the record and which this witness is not in any way qualified to testify to.

Q. Doesn't it so appear by that tank wagon ticket?

Mr. CAMPBELL. The paper itself is not in evidence.

A. Do you want me to answer that question?

Q. Yes, sir.—A. Yes, according to that it does, 6½ cents.

Q. Where did Mr. Offutt do business?—A. In Georgetown, I think. I am not personally acquainted. Offutt is over in Georgetown; West Washington they call it there.

Q. On April 11 I show you another sale to Mr. Offutt. On April 11 he appears to have sold him at 6½?—A. Yes.

Mr. CAMPBELL. Wait until I get my objection in. I object to the statement of counsel as to the contents of the tank wagon ticket from which he appears to be reading, upon the ground that the same is not in evidence, and has not been proved in any way.

Q. These look like the tank wagon tickets of the Standard Oil, don't they?—A. Yes, sir.

Q. Did you ever see that signature, Mr. Ziegler's?—A. Not that I remember; no, sir.

11169 Q. You don't remember that he delivered to you?—A. No, sir; I don't think he was on my route.

Q. That is the form of ticket that they used?—A. Oh, yes, sir.

Q. Now, I show you another to Mr. Offutt on May 9, 1901, of 6 cents [showing witness paper]. That looks like a tank-wagon ticket of the Standard Oil, doesn't it?—A. Yes, sir.

Mr. KELLOGG. Your objections can obtain to each question, Mr. Campbell.

Mr. CAMPBELL. Yes.

Mr. KELLOGG. It is not necessary to repeat them separately.

Mr. CAMPBELL. We stipulate that the same objection applies to all these tank-wagon tickets referred to by Mr. Kellogg.

Q. Now, I show you a tank-wagon ticket of a sale to Mr. Offutt on July 22, 1901, of 5 cents a gallon. That looks like a Standard Oil tank-wagon ticket, doesn't it?—A. Yes, sir.

Q. Now, what is your recollection—that the Standard Oil was also selling at 6½ and 6 and 5 cents during that summer?—A. According to that, yes.

Q. What is your recollection of it?—A. They did not sell to me at those prices.

Q. They did not sell to you at that?—A. No, sir; not at that time.

Q. You don't know that they did not to other people?—A. I could not say about that.

Q. Now, under those circumstances how do you know that the Independent cut the price first in Washington?—A. I did not

11170 say they did.

Q. Oh, you don't know that they did?—A. No, sir.

Q. You don't know but the Standard started in to cut the Independent?—A. I could not say. They quoted me the price. I don't know what they did to other people.

Q. Now I show you tank-wagon tickets, March 11, 1901, March 15, 1901, March 19, 1901, March 28, 1901, April 11, 1901, April 18, 1901, May 9, 1901, and July 22, 1901, containing the name of Mr. H. W. Offutt, and signed Ziegler, driver, and ask you if those are the kind of tickets the Standard Oil Company used in Washington.

Mr. CAMPBELL. Now, one moment, Mr. Barker. I object to the form of the question as entirely improper, assuming that the tank-wagon tickets shown to the witness were signed by a man by the name of Offutt; assuming that which is not in evidence in this case, there being no proof of Offutt's signature, the witness having already testified that he does not know the signature appearing upon these tank-wagon tickets; and upon the further ground that it is not proper cross-examination, the Government's counsel attempting to prove its affirmative case.

Q. Please answer the question.—A. Yes, sir, they are all Standard Oil Company tickets.

Q. Whose handwriting is that " J. W. Barker " in the ticket which you testified to, 207-B?—A. That is made out by the driver of the tank wagon.

(Papers marked petitioner's Exhibits 936-A, 936-B, 936-C,
11171 936-D, 936-E, 936-F, 936-G, and 946-H.)

Mr. CAMPBELL. They are objected to upon the ground that there is no evidence of their authenticity, and on the further ground that they are immaterial and not part of the proper cross-examination.

Redirect examination by Mr. CAMPBELL:

Q. Mr. Barker, you did not attempt to testify that the Independent Oil Company first began cutting prices at Washington? Your testimony simply was that they offered you a cut price?—A. Yes, sir.

Q. First; and that the Standard Oil Company refused to meet that cut price?—A. Yes, sir.

Q. And the cut price that the Independent Oil Company offered to you was one-half cent below the Standard Oil Company's price, whatever that price might be?—A. Yes, sir; that was the agreement.

Q. And this tank-wagon ticket of the Standard Oil Company, marked " Defendants' Exhibit 207-D," shows that on April 16, 1901, the Standard's price to you for refined oil was 6 cents, does it not?—A. Yes, sir.

Q. And at that time the Independent Oil Company's price to you for refined oil was 5½ cents, was it not?—A. Yes, sir.

Q. So that if the Standard Oil Company's price for refined oil in July, 1901, was 5 cents a gallon, the Independent Oil
11172 Company's price for refined oil upon that same date was 4½ cents a gallon?

Mr. KELLOGG. Do you know that?

Q. Is that true?

Mr. KELLOGG. Do not take the counsel's statement.

WITNESS. What date would it be?

Mr. KELLOGG. July.

Q. July, 1901.—A. Well, I don't remember buying any——

Mr. KELLOGG. No.

A. At that time. I could not say. Of course the receipts, if I had them, would show for themselves.

Q. But if the market price—the Standard Oil Company's market price at that date—was 5 cents a gallon, the Independent Oil Company's price to you under their arrangement with you was 4½ cents a gallon. Is that true?—A. Yes, sir; half a cent less than the market price, whatever the price might be.

Q. How long did the Independent Oil Company continue in business in Washington?—A. I think nearly two years.

Q. Until 1903?—A. No; 1902. They were there in 1901 and 1902.

Q. You don't think they continued on until 1903?—A. I don't think so; no, sir.

Q. You remember, Mr. Barker, do you not, that after the Independent Oil Company started in business cutting prices there at Washington, prices of oil came down?—A. Oh, yes, sir.

Q. I understood you to say that you did not know Mr. Ziegler's signature?—A. No, sir; I presume he is on another route
11173 from my neighborhood.

A. And these tank-wagon tickets shown you by Mr. Kellogg and offered in evidence by him are papers that you had never seen before?—A. No, sir; never saw them.

Q. And as to which you have no knowledge?—A. That is right.

By Mr. MORRISON:

Q. You are pretty familiar, aren't you, with the tank-wagon tickets of the Standard Oil Company?—A. Oh, yes, sir.

Q. You have examined these tickets that were shown you by counsel for the Government, haven't you?—A. Yes, sir.

Q. These exhibits—are those Standard Oil tickets [handing witness papers]?—A. They seem to be. They are marked Standard Oil Company. They are similar to the tickets I am accustomed to seeing.

Q. They are exactly like the tickets that were introduced here a few moments ago by the counsel for the defendants, aren't they?

Mr. CAMPBELL. One moment. I object to that upon the ground that the tickets show upon their face whether or not they are exactly alike, and upon the further ground that it appears upon the face of the tickets that they are not exactly alike, the signatures being entirely different.

Q. The signature is no part of the blank. The blank is exactly the same, isn't it?—A. Yes, the blank seems to be, yes, sir.

Q. Those were the tank-wagon tickets that the Standard Oil Company were using in Washington at that time, were they?—
11174 A. That was the form they used, yes, sir.

Mr. MORRISON. Are you going to require us to make further proof that those were the tank-wagon tickets that were given to Mr. Offutt at that time?

Mr. CAMPBELL. I think we are not prepared to consent that they are.

Mr. MORRISON. Well, you will let us know, will you, about that? It might necessitate our calling a witness from Washington.

Mr. CAMPBELL. We will.

Mr. MORRISON. Let us know. It will save some time.

Mr. CAMPBELL. I will compare them with my record of prices, and if they correspond, why then we will——

Mr. MORRISON. Yes.

Q. Your arrangement was that you were to have oil of this Independent Company for half a cent less than the Standard Oil's prevailing market price?—A. Yes, sir.

Q. You don't know what that price was to anybody except the price they made to you?—A. That is all

Q. You don't know whether they made a different price to other dealers in Washington, do you, than they made to you?—A. That I could not say, no, sir.

Q. Then all you know about the Standard Oil's market price was the price they quoted to you?—A. Yes, sir.

Q. When they were trying to sell you?—A. Except the statement Mr. Baughman made.

Q. That he would sell for half a cent less?—A. Yes. They
11175 were going to do business and sell oil at half a cent less than the market price.

Q. Did you get any rebate or concession from the Standard at any time?—A. From the Standard; no, sir.

By Mr. CAMPBELL:

Q. In order to arrive at the price that you were to pay the Independent Oil Company, you would necessarily have to make some investigation as to what the Standard's price was at that time, would you not?

Mr. MORRISON. That is objected to as leading and suggestive, and the witness has already said that all he knew about the Standard Oil Company's price was the price that they quoted to him.

Q. Is that true?—A. Oh, yes; I kept posted in regard to the prices, certainly, of the two different oil companies.

By Mr. MORRISON:

Q. Did you make any inquiry outside to find out what the Standard was selling to other people for in Washington?—A. You say "inquiry outside." What do you mean by that?

Q. Well, of dealers or anybody?—A. I don't remember inquiring of any dealers, but I kept posted in regard to the price of the Standard and also the Independent Oil Company.

Q. You kept posted by what they told you?—A. By what the Standard were selling for and also what the Independent were selling for, too.

Q. Do you know what they were selling for to anybody except yourself?—A. I don't remember now. I might have probably asked a question or so in a general way around among the dealers. I could not say now.

11176 Q. The fact is, you don't remember about that now! That is the fact, isn't it?—A. No; but I kept posted as a matter of business. I keep posted in regard to those things, of course.

Q. Yes; but you did say a moment ago you did not know what they sold to Offutt for?—A. No; I don't know what they sold to Offutt for.

Q. And you did say all you knew about it was the price that was quoted to you by the Standard Oil Company?—A. Yes, that is all; but at the same time, you know, a business man keeps posted in regard to those things.

Mr. MORRISON. Oh, I know he generally does.

By Mr. CAMPBELL:

Q. Well, you satisfied yourself, Mr. Barker, that the prices quoted to you by the Standard Oil Company were their general market prices, did you not?—A. Yes, sir.

Mr. MORRISON. Wait a moment. Let me object to that before his answer goes in there. That question is leading and suggestive, and the witness has already told all of the information that he has upon that subject.

Q. And you have stated in answer to Mr. Morrison's inquiry that in addition to your direct personal knowledge upon the subject, derived from the prices quoted to you by the Standard Oil Company, you kept yourself posted as to what their prices were to other customers of theirs.

Mr. MORRISON. Now, wait a moment. That is objected to because it assumes that the witness——

Q. I have not finished the question yet. Will you now
11177 tell us in what way you posted yourself upon that question?

Mr. MORRISON. Wait a moment. That is objected to because it assumes——

Q. State what the fact was.

Mr. MORRISON. That the witness has testified to what he has not testified to, and because the witness has already stated that he does not know what the Standard Oil Company were selling to other people for, and because he has already stated that he does not remember whether or not he made inquiry of other dealers at that time.

Q. Well, now, Mr. Barker, regardless of what you may or may not have said, will you tell us the fact?

Mr. MORRISON. I object to that, because he has already told us the fact.

Q. What inquiries did you make?

Mr. MORRISON. You don't want him to change it, do you?

Q. How did you keep yourself posted?—A. Well, my clerks would post me from time to time. They knew pretty well what was going on around the oil market. This man Simpson, whose name is signed to one of those tickets, was an old Standard employee, an old driver of the Standard Oil Company, and I knew him pretty well, and the old fellow kept me pretty well posted and waited on me promptly, and all of that.

Q. He was a friend of yours?—A. Well, in a business way. I bought a great deal of oil. He was with the Independent at this time. He used to be with the Standard at one time. It was a matter of business on both sides of course.

Q. And Simpson told you what the Standard's price was generally?—A. Yes, sir. He kept me pretty well posted around.
11178 He knew what he was selling for, and what other stores not buying from him were paying to the Standard Oil Company.

Q. At that time Simpson was driving for the Independent Oil Company?—A. For the Independent Oil Company.

11179 A. GORDON, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CAMPBELL:

Q. Where do you live, Mr. Gordon?—A. At Riverdale, Maryland.

Q. And your business there is what?—A. General merchandise.

Q. How far from Washington is Riverdale?—A. About nine miles.

Q. And you have lived and been in business there how long?—A. About eight months.

Q. Prior to that time were you doing business in Washington City?—A. Yes, sir.

A. Yes, sir.

Q. In the city of Washington, D. C.?—A. Yes, sir.

Q. And what was your business there?—A. Grocer store.

Q. A general grocery business?—A. Yes, sir.

Q. Selling refined oil?—A. Yes, sir.

Q. And gasoline?—A. Yes, sir.

Q. How long were you in that business in Washington?—A. About nine years.

Q. Dating then back of the year 1901?—A. Yes, sir.

Q. Prior to 1901 had you purchased your oil and gasolines exclusively from the Standard Oil Company?—A. Yes, sir.

Q. In 1901 did you make a change?—A. Yes, sir.

Q. And from whom did you begin buying?—A. The Independent Oil Company.

Q. Was that at the time the Independent Oil Company first
11180 began business in Washington?—A. Yes, sir.

Q. Did you transfer your trade to them?—A. Yes, sir.

Q. Did they offer you any inducement?—A. Yes, sir.

Q. How did you happen to go over to the Independent?—A. Why, they gave me a half cent off each gallon of oil.

Q. Tell us a little more fully just exactly what the offer was, and who made it?—A. It was the manager of the Independent Oil Company gave me a half cent off each gallon of oil or gasoline that I would buy from him.

Q. A half cent off what?—A. The price of each gallon of gasoline, or oil.

Q. Well, a half cent off the market price that the Standard Oil Company was charging?—A. Yes, sir.

Q. And how was that concession to be made?—A. Why, he would give it to me off of each purchase, you know; pay it to me in cash.

Q. He paid it to you in cash?—A. Off of the bill. He would take it off.

Q. Off of the bill. That is, he would bill you the oil——A. At the Standard Oil Company's price.

Q. At the Standard Oil Company's price?—A. Yes, sir.

Q. And then would pay you the difference of one-half cent a gallon in cash?—A. Yes.

Q. And would he pay you that difference at the time of the purchase, or at the end of a month?—A. At the time of the purchase.

Q. So that the tank-wagon ticket that you would receive from the Independent Oil Company would show the Standard Oil
11181 Company's price?—A. Yes, sir.

Q. And then he would pay you in cash one-half cent difference?—A. Yes, sir.

Q. Did you accept that offer?—A. Yes, sir.

Q. And begin purchasing oil and gasolines from him?—A. Yes, sir.

Q. And for how long did you continue purchasing from him on those terms?—A. As long as they were in business.

Q. And then you went back to the Standard?—A. To the Standard.

Q. And during all that time did you get that same concession in price?—A. Yes, sir.

Q. No matter how low the Standard Oil Company's price should go, or how low it did go, you received a price one-half cent lower from the Independent Oil Company?—A. Yes, sir.

Q. Do you remember when the Columbia Oil Company began doing business in Washington?—A. Yes, sir.

Q. What year was that?—A. I think it was about 1903 or '4, in that neighborhood.

Q. And at that time you were buying from the Standard Oil Company, were you?—A. Yes, sir.

Q. Did the Columbia Oil Company get your trade?—A. Yes, sir.

Q. And how did that happen?—A. Why, they gave me the same terms as the Independent.

Q. That is to say, they offered to sell you——

Mr. KELLOGG. Let him testify, now. Please don't testify quite so much. I object to that.

Mr. CAMPBELL. All right.

Q. Will you state in your own words, Mr. Gordon, what
11182 offer they did make to you?—A. Why, they would give me a half cent off of each gallon of oil and gasoline, whatever the price was of the Standard Oil Company, a half cent less.

Q. How was that half cent paid you?—A. I would give them a half cent less you know on the bill, take off that much every time I paid the bill.

Q. And your tank-wagon ticket would show the Standard Oil Company's prices?—A. The Standard Oil Company's prices.

Q. And then they paid you in cash——A. Yes, sir.

Q. One-half cent off?—A. Yes, sir.

Q. That was identically the same arrangement you had with the Independent Oil Company, was it not?—A. Yes, sir.

Q. And don't you know that the Columbia Oil Company was the successor to the Independent Oil Company or don't you know about that?—A. I don't know that.

Q. Do you know whether the Columbia Oil Company was Mr. Fehsenfeld's company——A. I don't know that.

Q. Whether he was the proprietor and had general control of that business?—A. I didn't know that.

Q. And you continued buying from the Columbia Oil Company upon those terms for how long?—A. Well, for about a year—its successor.

Q. And did you ever leave the Columbia entirely?—A. I left them for a short while.

Q. And then returned to them?—A. Yes, sir.

Q. And when you returned to them, did you get from them the same terms?—A. Yes, sir.

11183 Q. And continued to buy from them for how long?—A. As long as I was in business.

Q. As long as you were in business in Washington?—A. In Washington.

Q. That is, until 1906?—A. Yes, sir.

Q. Did the Columbia Oil Company make any explanation to you as to why this rebate should be paid to you in this manner—in this secret manner? Did they give any reason for doing it in that way, billing the oil at the Standard Oil Company's price and then paying you one-half cent off?—A. They would not tell me anything like that. I never asked.

Q. You never asked?—A. No.

Q. Nothing was said about its being a secret price, or a special price to you?—A. Yes, they told me that it was a special price to me.

Q. That they did not offer their other customers that?—A. That is what they said, yes.

Q. And I understand during all the time you were buying from the Columbia Oil Company, from 1903 down to the time you left Washington in 1906, you enjoyed this special price——A. Yes.

Q. Of one-half cent under the Standard Oil Company's price?—A. Yes, sir.

Cross-examination by Mr. KELLOGG.

Q. Who was the manager of the Independent Oil Company?—A. I don't know.

Q. Mr. Baughman?—A. I think that was he, yes, sir.

11184 Q. You knew Mr. Baughman, didn't you?—A. I did not know him personally, no.

Q. Did you know he was working for the Standard Oil Company at one time?—A. I heard that, yes.

Q. You knew he sold out the Independent Oil Company to the Standard Oil Company?—A. No, I didn't know that.

Q. You knew he worked for the Standard after he sold out the Independent, didn't you?—A. I did not know that.

Q. He didn't go back to the Standard?—A. I don't know whether he did or not.

Q. You bought of the Independent all the time that they were in business, did you?—A. Yes, sir.

Q. Did you buy any of the Standard during that time?—A. Hardly any.

Q. Did the Standard make you any price during that time?—A. No.

Q. You don't know what their price was?—A. Well, I had some knowledge of it.

Q. You don't know what they were charging other people?—A. No, I don't know what they were charging everybody. I knew what they were charging some people.

Q. You didn't know what they were charging everybody?—A. No.

Q. And during the time the Columbia was dealing with you you didn't know what the Standard was selling to everybody else, did you?—A. No.

Q. Are you still buying of the Columbia?—A. No, sir.

Q. You are not in business?—A. Yes, I am in business.

11185 Q. Whom are you buying of?—A. The Standard.

Q. The Standard Oil Company. When did you go to them?—A. As soon as I opened business down there.

Q. What?—A. As soon as I opened business in Riverdale.

Q. Didn't you buy any oil at Riverdale of the Columbia?—A. No; they don't come out there.

Q. Did you buy any oil of the independents at Riverdale?—A. No, sir.

Q. All this was in Washington that you have been talking about?—A. Yes, sir.

Q. How far is Riverdale from Washinton?—A. About nine miles.

Q. Isn't the price at Riverdale a good deal higher now than it is in Washington?—A. Just the same price.

Q. Did the Columbia Oil Company tell you anything about keeping the price secret?—A. Yes; they told me to keep it secret.

Q. You paid cash for your oil as you got it?—A. Yes, sir.

Q. So when oil was delivered to you you paid whatever the price was?—A. Yes, sir.

Q. Have you got any bills rendered for a larger price than that, with you?—A. I have no bills; no, sir.

Q. Did they render any bill at all? Didn't you just simply have it weighed out to you and pay for it at the time?—A. Oh, they would make a bill; yes, a tank-wagon bill.

Q. You are sure in every case the tank-wagon ticket had a higher price than that which you paid?—A. I could not understand. What was it?

Q. Are you sure that the tank-wagon ticket stated a higher

11186 price than you paid?—A. A higher price, yes.

Q. In every case?—A. Almost every case.

Q. Well, did it in every case?—A. Every case I had a chance to inquire, I found it so, that I got half a cent——

Q. No, no. When the driver gave you a tank-wagon ticket, when you were buying of the independents, at half a cent less than the Standard, the driver gave you a tank-wagon ticket and you paid for the oil in cash, didn't you?—A. Yes, sir.

Q. How did you arrive at the price? Did you take it off the tank-wagon ticket?—A. Yes.

Q. Well, the tank-wagon ticket stated the secret price that you got, did it?—A. No.

Q. What did it state?—A. It stated the open price.

Q. The open price?—A. Yes.

Q. In every case, did it?—A. In every case.

Q. And then you sat down and figured it up at half a cent less?—A. Yes.

Q. And paid it?—A. Yes.

Q. Have you got any of those tickets?—A. No, sir.

Q. Is that the way the Columbia did it too?—A. The Columbia did the same way.

Mr. CAMPBELL. This is the Columbia I understand he was testify-about.

Mr. KELLOGG. I thought it was the Independent.

WITNESS. The Independent.

Q. You did not buy any of the Standard during that time?—A. Very little.

Q. You bought some?—A. Bought some.

11187 Q. Paid half a cent higher?—A. Yes, sir.

Q. What did you buy from the Standard for if you could buy cheaper from the other?—A. Well, simply from acquaintance with the driver, I would help him out sometimes.

11188 LEOPOLD FRYE, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Frye, you live in Philadelphia, do you?—A. I do.

Q. You are connected with the Atlantic Refining Company?—A. I am.

Q. Just what is your position there?—A. At the present time I am superintendent of the Fairmount Station.

Q. Is that one of the Philadelphia city stations?—A. One of the Philadelphia city stations; yes, sir.

Q. How long have you been superintendent?—A. Since the first of December, 1904.

Q. What was your position prior to that time for several years?—A. General salesman.

Q. Covering what field?—A. The city of Philadelphia outside of Germantown.

Q. Did you as salesman make it your business to know what prices were being made on oil and gasoline by other dealers, by other concerns, that were selling oil and gasoline there?—A. I did.

Q. As you circulated around in the trade?—A. Yes, sir.

Q. When you sold oil or gasoline where did you get your prices?—A. From Mr. Reinhart.

Q. Who is Mr. Reinhart?—A. He was the superintendent of Belmont Station at Philadelphia.

Q. And whatever prices Reinhart or other superior gave
11189 you, you used in selling?—A. I did.

Q. And you do not now, as I understand it?—A. No, sir.

Q. Do you recollect whether in 1902 and 1903 there were any concerns in Philadelphia that were competing with the Atlantic Refining Company?—A. Yes, sir.

Q. Will you name them?—A. There was Crew, Levick & Company, the Union Petroleum Company and, in the latter part of 1902, C. K. Smith & Company started.

Q. How had Smith & Company been selling oil in 1902, and prior to that—in what form?—A. Prior to that he only sold barreled oil, in Philadelphia in barrels, but in the latter part of 1902 he started a truck with 10-gallon jacket cans to sell oil.

Q. That is 1902, you mean?—A. The latter part of 1902; yes, sir.

Q. Do you know at what price they sold their oil in Philadelphia when they made that change in the form of delivery, as compared with the price of the Atlantic Refining Company?—A. Yes, sir. He sold direct half a cent less than our price.

Mr. KELLOGG. Who is this?

Mr. CRAWFORD. Charles K. Smith & Company.

WITNESS. Yes, sir.

Q. For how long a time or period did that continue?—A. It did not continue long, I should judge about two months.

Q. Two months?—A. Yes, sir.

Q. During those two months they sold at a half a cent under the Atlantic Refining Company's price?—A. Yes, sir.

Q. At a later period, in 1903, did anything similar occur?—A. Yes, sir.

11190 Q. When was that?—A. That was in the month of April.

Q. April, 1903. What did they do then?—A. Why, he started again the same way with a truck and 10-gallon cans.

Q. You are speaking of Smith & Company?—A. I am speaking of Charles K. Smith & Company; yes, sir.

Q. At what price did they sell?—A. Half a cent less than our price.

Q. You mean than the price of the Atlantic Refining Company?—A. Yes, sir.

Q. To what class of trade did they sell?—A. To the stores, grocery stores.

Q. Was that the same class to which you were selling?—A. Yes, sir.

Q. And the price at which they sold to the same class of trade as you were selling was half a cent under the price of the Atlantic Refining Company?—A. Yes, sir.

Q. This, you say, was in April, 1903?—A. Yes, sir.

Q. Did they make any change after that in the form of delivery?—A. Yes, sir.

Q. What, and when?—A. On the 14th of May I saw a tank wagon on the street with the name of Mephisto on the tank wagon, a yellow tank wagon with the name Mephisto.

Q. Do you know who owned that wagon?—A. Yes, sir.

Q. Who?—A. C. K. Smith.

Q. Then he sold out of that tank wagon, did he?—A. Out of that tank wagon; yes, sir.

Q. To what class of trade?—A. The grocery trade.

11191 Q. The same class as before?—A. The same class as before.

Q. Now, what was true in regard to the price at which they continued to sell?—A. Direct half a cent less than the Atlantic Refining Company's price.

Q. That is to say, whatever the Atlantic Refining Company's price was, they sold half a cent under?—A. Yes, sir.

Q. During the month of April, 1903, and for several months following that, did you lose any customers?—A. We did.

Q. Who secured them?—A. C. K. Smith & Company, the drivers, and the son of Mr. Smith.

Q. Did you investigate to see why those customers left you?—A. I did.

Q. What did you ascertain?—A. The result was that they were buying the oil at half a cent cheaper than we sold it.

Q. They were buying it from Smith & Company?—A. From C. K. Smith & Company.

Q. For that reason they left you?—A. They left us, yes, sir.

Q. Can you mention any customers that you lost at that time?—A. Yes, sir.

Q. Do so, with their addresses.—A. Wilson, Second and Morris; Pedricker, Third and Tree; Brown, Thirty-third and Woodland avenue; Pennypacker, Thirty-three and Market; Hold, 707 Fairmount avenue. I will have to start in with the Jews now: Wenneck, Third and Gaskell——

Q. Well, that will probably suffice for the present. About how many customers did you lose at that period to Charles K. Smith & Company?—A. In the city of Philadelphia?

Q. Yes.—A. About six hundred.

11192 Q. Did they all go to Charles K. Smith & Company?—A. All through Charles K. Smith & Company, yes, sir.

Q. Did you make the same investigation as to all of them?—A. I did.

Q. And you ascertained the reason was the same in each case?—A. I did; the same thing.

Q. Now, from April, 1903, when this price cutting by Smith & Company began, was there any change in the Atlantic Refining Company's price?—A. Yes, sir.

Q. Which way—up or down?—A. Up.

Q. Up?—A. The price went up, yes, sir.

Q. In what month?—A. Now, that is something that I could not——

Q. Well, did it continue to go up?—A. Yes, sir; it went up from month to month. It started, I think, in August or September.

Mr. KELLOGG. What year are you talking about?

WITNESS. 1903.

Q. I am referring to the time when Charles K. Smith & Company started in to cut prices in April, 1903. Do you remember generally whether the price had changed and how it changed during the following summer months?—A. I do not remember that.

Q. Do you remember how low the price of Charles K. Smith & Company went in that summer?—A. To my best recollection it was 5½. It may be 5 cents. I am not positive on that.

Q. Whatever it was, what was its relation to the price of the Atlantic?—A. It was always ½ cent less than the Atlantic Refining Company's price.

Q. Did Smith & Company put on any more wagons?—A. He did.

Q. How many?—A. Two more—three more.

11193 Q. At what time?—A. One was put on right after that Mephisto wagon came on the street, and two more were put on in August.

Q. Did you make any reports in regard to this price cutting and the loss of your customers?—A. I did.

Q. To whom did you make it?—A. To Mr. Reinhart.

Q. From the Government exhibit in the case, of the prices at Philadelphia, I notice that in June and July, 1904, the price of the Atlantic Refining Company declined to 8½ cents, and then to 8 cents, and finally, in 1905, reached 7 cents, during the summer. Do you know what the Charles K. Smith Company was doing during that period in regard to prices?—A. He was continually selling ½ cent below the Atlantic Refining Company's price.

Q. Did you report that fact?—A. I did.

Q. Did you continue to lose customers to Smith & Co. during that period?—A. We did; yes, sir.

Q. And you reported that also, did you?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Of course, what you know about these prices, I suppose, you learned from your customers?—A. Sir?

Q. What you know about the prices you learned from your customers; what they told you?—A. I did.

Q. That is all you know about it, is what your customers told you?—A. I have been present even at the time when oil was paid for.

11194 Q. Where were you present when oil was paid for?—A. At 707 Fairmount avenue.

Q. Whose store?—A. The proprietor is Mr. Hold.

Q. He was paying whom for it?—A. He was paying the C. K. Smith Company driver ½ cent less than our price.

Q. He called you in to show what he was doing, did he?—A. No, sir.

Q. How did you happen to be in?—A. I was in there on business prior to the driver driving up.

Q. And you watched him?—A. Naturally.

Q. Did you listen to what they were saying?—A. I did. I stood right there. I was talking with the proprietor all the time at the same time.

Q. That is the only time you saw the price?—A. No, sir.

Q. When else did you see it?—A. I saw it at Thirty-third and Market, at Mr. Pennypacker's place.

Q. That is what he told you about it, you mean?—A. No, sir; I stood right there when the transaction took place.

Q. What was said?—A. He bought twenty gallons of oil.

Q. At what price?—A. At 6½ cents he paid. Our price——

Q. What year?—A. In 1903.

Q. What month?—A. That was in the fall. I could not tell you the date now when that occurred.

Q. The fall of 1903?—A. Yes, sir; October or November; I don't know exactly which one.

Q. October or November, 1903?—A. Yes, sir.

Q. He bought twenty gallons?—A. Yes, sir.

11195 Q. Of C. K. Smith?—A. Yes, sir.

Q. And paid how much for it?—A. Why, half a cent less. I think he paid 6½ cents.

Q. 6½?—A. Yes. I stood there, and Mr. Pennypacker said, "That is the reason I have left you."

Q. What grade of oil was it?—A. The oil we were selling?

Q. What grade of oil was Smith selling?—A. Water White.

Q. Did you test it?—A. No, sir.

Q. You don't know anything about it, then?—A. No, sir.

Q. Did Smith sell Water White oil at 5½ cents?—A. Yes, sir; that is what he claimed—told everybody the same thing.

Q. When?—A. During all that time.

Q. During all that summer?—A. Yes, sir.

Q. Sold at 5½ cents all summer?—A. No, sir; not 5½, I beg pardon. He sold half a cent less than the Atlantic Refining Company price continually, all the way to a cent, and Mr. Smith told the people "As long as we are in business we will sell you half a cent less than the Atlantic Refining Company ever will sell."

Q. Now, when was it that Smith was selling at 5½?—A. I could not recall those dates any more, because the price was varying continually.

Q. You said Smith started in to do business in 1903?—A. He started in the fall of 1902 first.

Q. 1902?—A. Yes, sir.

Q. Now, when was it he was selling at 5½ cents?—A. I

11196 could not tell you any more dates than anybody else could, because I can't keep the various changes in prices in my head.

Q. You don't know?—A. No, sir.

Q. When was he selling at 6½?—A. I don't know; I couldn't tell you.

Q. You don't know?—A. I do not; the prices varied so that I could not tell.

Q. During the summer of 1903 did the Standard sell at 6 cents?—A. I don't know; I couldn't tell you.

Q. You don't know anything about it?—A. No, sir.

Q. Did it sell at 5½?—A. I don't know, sir.

Q. Did it sell at 4½?—A. I don't know, sir. How can I remember anything that occurred when the prices changed from month to month? Whenever they changed, I didn't pay any attention to that.

Q. You testified that Smith & Company sold at half a cent under the Standard's price and sold at 5½. I want to know when it was.—A. Well, I couldn't tell you when the date was.

Q. What year was it?—A. I think it was in 1903, or it may have been in the fall or late in the winter—in November or December—when he started out to sell from the cans. I couldn't tell you that, because——

Q. Do you know that they sold at 5½ at all?—A. I do.

Q. What was your price?—A. A half a cent higher.

Q. That is all you know about it?—A. That is all I know about it.

Q. You sold at 6, did you?—A. I don't know. It was al-
11197 ways half a cent higher.

Q. If he sold at 5½ and you sold at half a cent higher, it was 6?—A. That is it.

Q. That you do know?—A. I do know that.

Q. Then, you know you sold at 6, don't you?—A. Yes, sir.

Q. Now, what year?—A. I tell you I don't know exactly. I only give those figures because he cut half a cent below, always.

Q. Well, was it in 1903 or 1904?—A. I don't know.

Q. Or 1902?—A. I don't know. I haven't charged my mind with the various prices.

Q. Now, it appears by the record in this case that the Standard Oil Company never sold oil during those years at 6 cents a gallon.—A. Well, that may be. I don't dispute that at all.

Q. Then, you don't know that it was 6 cents?—A. No; I do not; I am not positive; I could not tell you the date, nor the month, nor anything.

Q. You don't know they sold at all at 6 cents during those years?—A. No. I can't remember. I could not remember what the prices were. They varied from month to month.

Q. Of course you can't. I didn't suppose you could when you testified to it.—A. Sir?

Q. I didn't suppose you could when you testified to it; that is the reason I asked you.

Redirect examination by Mr. CRAWFORD:

Q. You testified on one occasion—the second of two you referred to—when you were present and saw a customer buy from

11198 Smith's driver and paid him at the rate of 6½ cents, and you said you thought that was in the fall of 1903.—A. Yes, sir.

Q. You said that it might have been in October or November.—A. Yes, sir.

Q. Are you sure about that month?—A. No; I am not sure, because I have not charged my mind with the exact dates when this occurred. I only know the incident.

Q. Might it have been September?—A. It might have been in September. It was the incident, you know, which my mind was charged with. I saw him personally pay ½ cent less than what our price was.

Mr. KELLOGG. What price was it?

WITNESS. Well, I think, if I remember right, it was 6½, but I am not quite sure in my mind that is what he paid for it. I could not tell you, because I did not charge my mind with the various prices when they changed.

Q. But you know it was half a cent under the then price of the Atlantic Refining Company?—A. What we were selling for at that date—the Atlantic Refining Company price.

Q. Mr. Frye, I understand that you testify that you do not undertake to say positively what the price of either the Atlantic Refining Company or Smith & Company was at any particular date?—A. No, sir.

Q. But that during the whole period you have mentioned their price was always half a cent under that of the Atlantic Refining Company?—A. Yes, sir.

By Mr. KELLOGG:

Q. How do you know?—A. Every day——

11199 Q. If you don't know what the price was, how do you know?—A. Because the people would tell me when I come in the stores.

Q. Oh, they would?—A. Yes, sir.

By Mr. CRAWFORD:

Q. You knew what the prices were at the time?—A. Yes, sir, I knew what the price was at the time, at the date.

Q. But at the present moment you do not recollect?—A. I do not recollect at the present moment what the prices were at the various times.

By Mr. KELLOGG:

Q. Do you make reports of your prices constantly to the Standard Oil?—A. No, I do not.

Q. Don't they keep a record of the prices every month and every day?—A. They do not to my knowledge.

Q. You report them?—A. No, sir.

Q. Don't you report them at all?—A. The prices?

Q. Yes.—A. No; I have nothing to do with that.

Q. You report the prices you get, don't you?—A. From the storekeepers, yes; I did that.

Q. Did you ever pay any rebates?—A. No, sir.
Q. Never?—A. No, sir.
Q. Never knew of one being paid?—A. No, sir.
Q. To anybody in Philadelphia?—A. No, sir.
Q. Never?—A. No, sir, I had nothing to do with anything of that kind.

11200 DAVID S. TAYLOR, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Taylor, you live at Pittsburg, I believe?—A. My home is at Crafton, a suburb of Pittsburg.
Q. Well, you are connected with the Atlantic Refining Company there?—A. Yes, sir.
Q. In what capacity?—A. I am chief accountant.
Q. Of what?—A. Of the Atlantic Refining Company, Pittsburg department.
Q. What territory does that department sell?—A. Pittsburg, Johnstown, Altoona, Spangler, Newcastle, and Erie, and several substations from each of those points.
Q. Speaking generally, what portion of the State?—A. The western part of the State.
Q. What office controls the eastern part of Pennsylvania?—A. I have understood Philadelphia.
Q. Those two departments divide the State of Pennsylvania?—A. I don't know of any other only Philadelphia and Pittsburg.
Q. How long have you occupied the position that you have now?—A. I started in the present position on June 1, 1906.
Q. In what various ways does the Atlantic Refining Company in the Pittsburg department sell refined oil and other products?—A. I do not have anything to do with the selling end of it at all.

Q. How does it appear on the books?—A. On our records
11201 we call it bulk, tank wagon, and barreled oil.

Q. Any in cans?—A. I could not say. Yes, 5 and 10 gallon cans.
Q. Have you computed the percentage of refined oil sold in the Pittsburg department, with reference to the places where it was refined?—A. Yes, sir.
Q. What percentage of all the refined oil sold by the Atlantic Refining Company in the Pittsburg department, which includes, as I understand, the western half of Pennsylvania, is refined in the State of Pennsylvania?—A. 87.43 per cent.
Q. And what is the fact similarly as to naphtha?—A. 95.46 per cent.
Q. Now, all of that refined oil and naphtha—that is, something over 87 per cent of refined oil and something over 95 per cent of naphtha, which is refined in Pennsylvania refineries, is transported to the places where it is sold through Pennsylvania on Pennsylvania railroads, is it not?—A. On various railroads in Pennsylvania.

Q. What proportion of the business or what proportion of the sales of refined oil in that department is by tank wagon?—A. For the year 1907, 73.63 per cent.

Q. How much of that oil was sold within the State of Pennsylvania?—A. The entire amount of it.

Q. What percentage of the total refined-oil sales in that department in 1907 consisted of sales in bulk?—A. You mean within the State?

Q. Within the State of Pennsylvania.—A. 4.37991 per cent.

Q. What percentage of your total sales of refined oil in
11202 bulk were in 1907?—A. You mean the gallonage or the percentage?

Q. The percentage.—A. That is just what I gave you, in bulk. Oh, the total?

Q. I am asking you as to the total sales in bulk, irrespective of where they were sold.—A. 4.38 per cent.

Q. That is 4.38 per cent of your total refined-oil sales was sales in bulk?—A. In bulk, yes.

Q. What do you mean by sales in bulk?—A. Deliveries from stations to customers who call at the stations—delivered to them in containers which they themselves own.

Q. You mean such as in peddler's tank wagons and that sort of thing?—A. You mean if a peddler's tank wagon comes to the station?

Q. Yes.—A. Yes; that is sold in bulk. We call that a bulk sale.

Q. That is one sort of a bulk sale?—A. Yes, sir.

Q. And are there any sales of tank cars included in that?—A. That would be included in the bulk, I would think.

Q. Now, out of that 4.38 per cent, is any part of it sold outside of the State of Pennsylvania; and, if so, what percentage?—A. Yes, sir; .00009.

Q. The fact is, at any rate, that something more than 4.37 per cent of the total refined oil sales in your department consist of sales in bulk made in the State of Pennsylvania?—A. Yes, sir.

Q. Now, have you any figures as to the percentage of your total refined oil sales, which the sales in cans amounts to?—A. You
11203 refer to peddling wagons?

Q. Yes. —A. Yes, sir; I have.

Q. What do they amount to?—A. 2.6 per cent.

Q. And how much of that is sold within the State of Pennsylvania?—A. All of it.

Q. How about the barrel and case branch of the business? What percentage of the whole does that form?—A. 19.39 per cent.

Q. And what part, if any, of that is sold outside of the State?—A. .00406.

Q. So that slightly over 19.38 per cent of the total refined oil sales consists of sales in barrels or cases within the State of Pennsylvania?—A. Yes, sir.

Q. Have you made similar computations for naphtha and gasoline?—A. Yes, sir.

Q. Do the percentages for naphtha and gasoline compare closely with those of kerosene, refined oil, for the different classes of trade?—A. No, there is a variation in the percentage.

Q. Take the total sales for naphtha; what is the difference?—A. You mean the grand total of all of our deliveries?

Q. Take the grand total of naphtha and gasoline, of these different classes, and state what percentage of it is sold within the State of Pennsylvania.—A. The total that is sold within the State of Pennsylvania is 99.99585. That is refined oil.

Q. What are the figures on gasoline and naphtha?—A. Within the State?

Q. Within the State of Pennsylvania?—A. 99.9916.

11204 Q. The oil or gasoline, as the case may be, sold within the State, put into tank wagons or sold in bulk or in other forms, as you have testified, is stored where?—A. At various stations.

Q. At various tank stations?—A. Tank stations and barrel stations as well.

Q. Whether it has originally been refined in the State of Pennsylvania, as you stated, when you began to testify, about a large portion of it, or whether it has been obtained from other sources, it is first stored in tank stations, is it, within the State?—A. No, I could not say as to that, as to all the shipments; not as to all the shipments.

Q. You can't say that? Do you know what the custom is in regard to keeping oil on hand at various tank stations? Is it usual to keep a certain amount on hand?—A. That is something I do not come in touch with at all.

Q. Well, you know you have tank stations?—A. I know we have tank stations, yes, sir.

Q. What are those tank stations used for?—A. They are used for storing oil to deliver by tank wagon.

Q. And there are also what you call barrel stations?—A. Yes, sir.

Q. What are they used for?—A. They are used for storing barreled oil for delivery to customers.

Q. Are the tank stations also used to store oil for delivery in bulk, bulk sales?—A. They make bulk sales from tank stations.

11205 Q. Then, it is a fact, isn't it, that most of the oil and naphtha, at any rate that is sold in the way you describe, is first stored either in a tank station or in a barrel station?—A. That is, if it is a tank wagon station it is mostly sold from there, yes, sir.

Q. Well, it is stored there before it is sold there, isn't it?—A. As far as I know. I do not know the method of handling it because I am not in touch with that.

Q. But you know it is first put into the tank wagon station? It is first put into the tank, isn't it, before it is taken out of the tank?—A. Into the tank wagon.

Q. Oh, no. The oil which is sold into a tank wagon comes from a tank?—A. Yes, sir, from our tank wagon station.

Q. It must, therefore, have been put into the tank, must it not?

Mr. KELLOGG. I think we will admit that.

Mr. CRAWFORD. That is all.

Cross-examination by Mr. KELLOGG:

Q. Now, as you say, about 87 per cent of the refined oil sold in Pennsylvania is manufactured in Pennsylvania?—A. 87.43 per cent.

Q. At what refineries?—A. We get it from the Atlantic Refining Company, Pittsburg, and the Atlantic Refining Company at Franklin, and possibly from the Point Breeze refinery, Philadelphia. I could not state as to the last. We have deliveries from the first two, but whether from the last I could not say.

Q. Those are manufactories situated in Pennsylvania?—A. Yes, sir.

11206 Q. And they have pipe lines leading to them, haven't they?—A. I don't know, sir.

Q. You don't know anything about that?—A. No, sir.

Q. You don't know where they get the crude?—A. No, sir.

Q. How do you know you get the oil from those refineries then?—A. We get memorandum invoices from them.

Q. Memorandum invoices?—A. Yes, sir.

Q. You don't know where that oil comes from?—A. No, sir.

Q. You do not know it is manufactured by those companies?—A. It comes from those refineries to us.

Q. But you do not know where it is manufactured?—A. I have no knowledge of that.

Q. None whatever?

Mr. CAMPBELL. Do you question that, Mr. Kellogg?

Mr. CRAWFORD. If you question it we will prove it in detail.

Mr. KELLOGG. I would not question it if you would put a man on the stand who knows where the crude comes from.

Mr. CRAWFORD. You have no right to dictate terms on that score.

Mr. KELLOGG. Oh, no, I don't question it or care; it does not cut any figure.

Q. And the other 13 per cent comes from where?—A. You mean the total 87 per cent of refined?

Q. Yes.—A. From refineries outside of the State.

Q. Where are they located?—A. It may be from Parkersburg, West Virginia, or it may be from Cleveland.

11207 Q. It comes from one of those refineries?—A. Well, I couldn't say that. It comes from a refinery outside of the State?

By Mr. CAMPBELL:

Q. This oil that was sold in your department, in 1907, within the State of Pennsylvania—I understand that of the refined oil sold within the State of Pennsylvania all but 12.57 per cent came from Pennsylvania refineries?—A. Yes, sir.

Q. And of the naphtha all but 4.54 per cent came from Pennsylvania refineries?—A. Yes, sir.

Q. And that all of the oil sold in Pennsylvania, whether coming from Pennsylvania refineries or whether coming from outside refineries, is shipped into Pennsylvania and stored at various storage tanks in that State?—A. The major portion of it is, yes. Now let me make myself clear on that in reply to the question.

Q. It is shipped into your department, I mean? It is shipped into your part of Pennsylvania and stored?—A. That is my understanding of it.

Q. And goes to the different stations and substations in your department?—A. That is, of course, for the marketing department. My understanding is that it does, but the marketing department handles that part of it entirely.

Q. That is your understanding?—A. Yes, sir.

Q. And then, having gotten to those various stations, it is sold in Pennsylvania, either by tank wagon or in barrels or in bulk, as the case may be?—A. Yes, sir.

Q. Or in cans to the consumer?—A. Yes, sir.

Q. You did not select the year 1907 for the making up of
11208 these figures for any special reason?—A. No, sir.

Q. You took that as a representative year?—A. Yes, sir; took it as a representative year.

11209 H. O. Rodgers, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Crawford:

Q. Mr. Rodgers, you are general manager of the domestic trade department of the Atlantic Refining Company in Philadelphia, are you not?—A. Yes, sir.

Q. And you have charge of what is called the Philadelphia department, haven't you?—A. Yes, sir; the Philadelphia department.

Q. What territory does that include?—A. That includes the eastern half of Pennsylvania and the State of Delaware.

Q. Do you know whether that is all of the State of Pennsylvania which is not sold from the Pittsburg office of the same company?—A. Yes, sir; it includes the entire State.

Q. The two departments divide the State?—A. Yes, sir; divide the State.

Q. So far as the business of the Atlantic Refining Company is concerned?—A. Yes, sir.

Q. Have you computed the percentage of the total sales in your department, in the State of Pennsylvania, of refined oil, which is refined itself in the State of Pennsylvania?—A. I had that computed in my office.

Q. Can you state what the percentage is?—A. It is about 92 per cent, if I remember rightly.

Q. I hand you a paper. Refreshing your memory by that, will you state accurately what the percentage is?—A. 92.93 per cent.

11210 Q. That is refined oil, is it?—A. That is refined oil, sold in the State of Pennsylvania, which we receive from refineries located in the State of Pennsylvania.

Q. And have you a similar percentage as to naphtha and gasoline?—A. Yes, sir.

Q. What is that?—A. That is 89.17 per cent.

Q. That means that of the total naphtha and gasoline sold in your department, Pennsylvania, that percentage was refined at refineries in the State of Pennsylvania?—A. Inside of the State of Pennsylvania; yes, sir.

Q. Do you include any other territory than a part of Pennsylvania?—A. The State of Delaware.

Q. Now, have you computed the amounts and percentages sold in your entire department by the Atlantic Refining Company, in the various forms in which you sell refined oil and naphtha?—A. Yes, sir.

Q. Have you combined those figures with the figures from the Pittsburg department also?—A. Yes, sir.

(Paper marked "Defendants' Exhibit 208.")

Q. I hand you defendants' Exhibit 208. Will you please state what that is, generally?—A. That shows the refined oil and finished naphtha sales of the Atlantic Refining Company, the total sales.

Q. Do not give the figures, but go on with the general description?—A. And giving the total sales in the State of Pennsylvania.

11211 Q. Also in Delaware, or only Pennsylvania?—A. This is only Pennsylvania.

Q. Isn't that the territory of the Atlantic Refining Company?—A. That includes Delaware; total sales including the sales in Delaware.

Mr. CRAWFORD. If Mr. Kellogg and the examiner do not object, if we could adjourn at this time I think I could get this into shape so as to put it in in two or three questions after the recess. It is a complicated matter, but it may be made very simple, and I do not want to lengthen it out at all.

The EXAMINER. Very well.

(A recess was here taken until 2 o'clock p. m., at which time the direct examination of the witness was resumed.)

By Mr. CAMPBELL:

Q. The Atlantic Refining Company as a whole does business where?—A. In the State of Pennsylvania and the State of Delaware.

Q. And into how many departments is that company divided?—A. Two.

Q. Two departments?—A. Two departments.

Q. The Pittsburg department and the Philadelphia department?—A. The Pittsburg department and the Philadelphia department.

Q. What territory does the Pittsburg department cover?—A. The western half of the State of Pennsylvania.

Q. And the Philadelphia department?—A. The eastern half of the State of Pennsylvania and the State of Delaware.

Q. Throughout that territory you sell refined oil and naph-
11212 tha by what methods of delivery?—A. By tank wagon, in barrels, tank cars, bulk at the stations, and in cans to the consumers.

Q. And you have throughout that territory various main and substations, have you?—A. Yes.

Q. Where you have storage tanks for the storage of oil and gasolines?—A. Yes.

Q. Do you make any rule as to how much oil and naphtha and gasoline you keep in supply at these various stations?—A. We endeavor to keep about thirty days' supply, sometimes a little more.

Q. In some cases, I suppose, your stocks are equivalent to a still greater supply?—A. Oh, yes; we try to keep on hand at least a thirty days' supply.

Q. If you have the figures before you, state what percentage of the total refined oil business of the Atlantic Refining Company for the year 1907 was done by tank wagon.—A. The total was 72.9 per cent.

Q. Describe briefly the method of selling by tank wagon.—A. We receive the oil at our various stations throughout the State in tank cars, and empty from the tank cars into our storage tanks, and then we empty from the storage tanks, draw it off into our tank wagons; those tank wagons then deliver it to the various stores, drawing it from the tank wagon into the customers' containers, as may be required.

Q. And those tank wagons have regular routes that they cover?—A. They have regular routes that they cover.

Q. Within a radius of about how many miles from the storage
tank?—A. About fifteen miles; that is, we figure that we
11213 can not cover a distance much greater than fifteen miles.

Q. The oil, as I understand, is drawn from the storage tank into the tank wagon, and then the driver goes out on his route and sells and delivers the oil to the customer?—A. To the customer.

Q. Direct from the wagon?—A. Direct from the wagon.

Q. Do you have any instances where the tank wagon goes over the State line?—A. I think there is one point in the lower section of the State, between Pennsylvania and Delaware, where we have one wagon, I think, that visits a couple of towns.

Q. And how much of your total tank-wagon business does that constitute; what percentage?—A. That is .08 per cent.

Q. And I understand that the balance of your tank-wagon business consists of sales where the sales from the tank wagon are made to the

customer within the State where the oil has previously been stored?—A. That is correct.

Q. Now, what percentage of your total refined oil business is sold in bulk?—A. 9.63.

Q. And what you describe as sales in bulk consist of what?—A. They would include sales at the yard into customers' containers and deliveries in tank cars.

Q. What percentage of the total sales in bulk is sales where the sale and delivery is made within the State where the oil has previously been stored? All but 3.26 per cent?—A. Yes; all but 3.26 per cent.

Q. What percentage of your total refined oil business is in cans to the consumer?—A. We haven't got that.

Q. Yes, I think you have. Is that 4.67?—A. Oh, yes; that
11214 is the peddling department. I didn't notice that.

Q. The peddling department?—A. Yes. That is 4.67.

Q. And is all of that oil sold within the State where the cans are filled and where the oil has previously been stored?—A. Yes, sir.

Q. What percentage is sold in barrels and cases?—A. 12.80 per cent.

Q. And how much of that business, where you sell in barrels and cases, consists of sales where the sales and deliveries are made within the State where the barrels are filled and where the oil has previously been stored?—A. All except 1.58.

Q. You mean all except 1.58 per cent?—A. Yes.

Q. Now, basing the calculations upon those figures, please give us the total of your refined oil business for the year 1907, where the sales were all within the State in which the oil had previously been stored. Was it all but .57 per cent?—A. .57 per cent.

Q. Have you figured the percentages for finished naphtha?—A. Yes, sir.

Q. For the same year?—A. Yes, sir.

Q. Without going into the percentages for the different methods of delivery, state the total percentage of your sales of finished naphtha which are intrastate?—A. All except 2.28 per cent.

Q. Of the total?—A. Of the total amount.

Q. Of the total finished naphtha?—A. Of the total finished naphtha.

Q. Is 1907 a representative year?—A. Yes; the year 1907.
11215 Q. You did not select that year for any particular reason?—A. No.

Q. That would be a representative year?—A. That would be a representative year.

Q. Showing these percentages?—A. Yes, sir.

Q. I call your attention to the Atlantic Refining Company prices at Philadelphia, in the first place in the year 1903. [Handing witness paper.] When did you take charge of Philadelphia?—A. I took charge in May, 1906.

Q. I mean when did you first take charge?—A. I took charge of the refined oil business in Philadelphia August 1, 1903.

Q. That is what I am referring to. What was the Atlantic Refining Company's tank wagon price for Water White oil at that time?—A. When I went to Philadelphia it was 7 cents.

Q. Who were your competitors at Philadelphia then?—A. The Crew-Levick Company, the Union Petroleum Company, and Charles K. Smith & Company.

Q. Did you receive from your salesmen and tank wagon superintendent, from time to time, reports as to what prices the competitors were making in your town?—A. Yes, sir.

Q. What reports were coming in at the time you took charge there in Philadelphia, with respect to your competitors' prices?

Mr. KELLOGG. That is objected to as hearsay.

A. The reports were that Charles K. Smith was cutting prices from half a cent to a cent per gallon—cutting our tank wagon price.

Q. Now I refer you to the years 1904 and 1905. It appears from one of the Government exhibits in this case that the
11216 Atlantic Refining Company's price declined from 10 cents, in April, 1904, gradually throughout the balance of that year and through the early part of 1905, until it reached the price of 7 cents in 1905.—A. Yes, sir.

Q. Can you briefly explain the causes for that decline?—A. It was due partly to the refinery reduction in price and partly to the fact that we made other reductions on account of the competitor Charles K. Smith cutting our price and we meeting his price.

Q. That is, you received reports from your employes that Charles K. Smith & Company were cutting prices throughout that period?—A. Cutting the price, yes.

Q. And acting upon that information you made——A. We made reductions in our price.

Q. Did you ever reduce your price below that at which the competitor was selling?—A. No, never.

Q. Such reductions as were made were made merely to meet prices previously initiated by Charles K. Smith & Company?—A. Yes.

Cross-examination by Mr. KELLOGG:

Q. Now you are talking about the interstate business and intrastate business. The Standard Oil Company has no refinery in the State of Delaware, has it?—A. No, sir.

Q. All of the oil that you sell in the State of Delaware is shipped in from outside of the State?—A. Yes.

Q. Where is it shipped from?—A. Partly from the Phila-
11217 delphia refineries and partly from other refineries.

Q. New York?—A. Some may come from New York State.

Q. Now, in your Atlantic Refining Company, the selling department is separate from the manufacturing, isn't it?—A. Entirely.

Q. That is, I mean it is all one company, but separate departments?—A. Yes, sir.

Q. Where you ship oil into the State of Delaware from Philadelphia, you take it at the refinery and pay the freight on it into

Delaware, don't you?—A. Yes. It depends where it goes. At Wilmington it goes by barge.

Q. Well, either by barge (by water) or by rail?—A. Yes.

Q. You pay the freight?—A. The refinery pays the freight.

Q. No; the selling company pays the freight.—A. No.

Q. Doesn't the selling company accept the goods at the refinery?—A. We have a price f. o. b. the refinery, but the refinery pays the freight; yes.

Q. But your price named to you is f. o. b. at the refinery?—A. Yes; and the refinery——

Q. The cost of the freight is charged against your company?—A. Yes.

Q. So that you practically pay the freight?—A. Yes; in the end we pay the freight.

Q. Yes; that is what I understood. So you take that oil in the State of Pennsylvania and ship it all into the State of Delaware, all the oil you sell?—A. No; not all the oil we sell.

Q. You do not manufacture any in Delaware?—A. No.

11218 Q. But I mean all the oil either from Pennsylvania or New Jersey or somewhere.—A. Yes, sir.

Q. You ship it in?—A. Yes.

Q. How many tank stations have you in Delaware?—A. I could not say offhand; I suppose seven or eight.

Q. And you ship oil by tank cars, the Union Tank Line cars, don't you?—A. Mostly.

Q. Or else by barge?—A. Or by barge.

Q. But where you ship by rail you use the Union Tank Line Company cars?—A. As a rule.

Q. And you ship it directly to these stations and substations and unload it?—A. Yes, sir.

Q. And what you mean by its being intrastate commerce, in these statements, is, you assume, because you take it out and sell it that it is intrastate and not interstate commerce, in the statement that you make?—A. No; that is——

Mr. CAMPBELL. I object to asking the witness a question as to the effect of his testimony.

Mr. KELLOGG. I thought you put in that statement.

Mr. CAMPBELL. I have not put in that statement.

Mr. KELLOGG. Oh, you have not?

Q. When you talk about its being intrastate commerce, you mean because it is taken out of the tank and distributed by tank wagons not crossing the State line, don't you?—A. Yes.

Q. That is all I want. That is what you mean?—A. Yes.

Q. So into those two States, Pennsylvania and Delaware together, both put together, you ship in about—what was that—27 or 28 per cent?—A. Whatever the statement shows.

11219 Q. Now, the refinery of the Atlantic Refining Company is situated where?—A. Point Breeze.

Q. And where else?—A. We have one at Point Breeze, and one at Franklin, and one at Pittsburg.

Q. What kind of oil do you make at these places—refined oil, the various grades?—A. The various grades, yes.

Q. Oil made from certain of the Pennsylvania oils is of a higher grade than that made from Texas and the midcontinent oils, is it not?—A. Well, I am not an expert refiner; I can not say on that.

Q. Don't you know the difference between the grades of oil you sell?—A. Oh, yes; I know we sell different grades of refined oil.

Q. Certain of your grades are known to be made from Pennsylvania oil, aren't they?—A. No, sir; we don't know what they are made of.

Q. You don't know what they are made of?—A. No.

Q. You know the oil comes to these refineries through pipe line, don't you?—A. I know they get the oil by pipe line; yes.

Q. They get some of it from Pennsylvania, they get some of it from West Virginia, they got some from Ohio, and some from Indiana, and some from the midcontinent country, don't they?—A. Not to my knowledge. I don't know where they get it.

Q. You don't know anything about it?—A. I don't know where the oil comes from at all.

Q. Well, I think that already appears. You say the decrease in price in 1904 and 1905 was caused partly by the decrease in the refinery price?—A. Yes.

11220 Q. And the refinery and the selling department all belong to one company?—A. Yes.

Q. You don't know what was the cause of the decrease in the refinery price?—A. No, sir.

Q. What was the cause of the decrease in 1902 and 1903?—A. I was not in Philadelphia at that time, except——

Q. You were in 1903, weren't you?—A. From August 1st. I would assume it would be the same thing.

Q. Well, September and August were very low months?—A. September and August were low months. That was the time Charles K. Smith was cutting the price.

Q. I suppose you were not cutting any prices?—A. No; we did not cut Smiths' price at all.

Q. You never cut Mr. Smith's price?—A. No, sir.

Q. You always followed down?—A. As a rule; yes.

Q. What do you mean by "as a rule?"—A. Sometimes we did not follow down; sometimes we were not willing to meet his price.

Q. I notice you followed down here so that you were selling oil at a loss in August and September?—A. That is right.

Q. Do you think Mr. Smith was selling at a loss?—A. I can not say.

Q. You don't know?—A. No.

Q. Was there pretty sharp competition there between you and Crew-Levick, and the Union Petroleum and Smith?—A. Crew-Levick and the Union Petroleum Company did not seem disposed

to cut price, but when Smith came on the field he seemed very much disposed to cut price.

Q. You never cut anybody's price?—A. We never cut
11221 Smith's price.

Q. Did you ever cut anybody else's?—A. Well, I can not recall now that we did.

Q. Can you recall that you did not?—A. Well, no. As a rule we did not cut prices, I say that.

Q. Yes, that is the rule; but there are exceptions to that rule, aren't there?—A. There are exceptions that make the rule.

Q. Well, there probably was some pretty sharp price cutting when you were selling oil for two months there at a loss?—A. Indeed there was.

Q. Now, if rebates were paid to any of those customers during that time, who would authorize it?—A. Either myself or the manager at that time—the general manager.

Q. In September you were the manager?—A. September, '03? No; I was the assistant manager at that time.

Q. Assistant manager?—A. Yes. I had charge of the refined oil department.

Q. After you became the manager would you have to authorize it?—A. Yes.

Q. Did you ever authorize the payment of a rebate?—A. I never called them rebates. In meeting some prices, sometimes, rather than make a general reduction we would make an allowance to the customer to equal the cut price.

Q. Yes; at the end of the month you would figure up and deduct from the price you sold him the oil a certain amount?—A. So as to equal the price agreed upon as made by the competitor.

11222 Q. Well, he paid for the oil as he got it at the Standard price?—A. Yes; at our price.

Q. And then you paid him back a certain sum?—A. Yes; so as to net the price as agreed upon.

Q. Well, that is what we have been calling a rebate. You do not call that a rebate?—A. I call that an allowance.

Q. Well, we will call it an allowance.—A. Yes.

Q. You have done that?—A. I have done that; yes.

Q. Now, you are sure that that allowance never got below the price of your competitor?—A. Yes, sir.

Q. How do you know that?—A. My general knowledge would give me that information, that we never made a price, even on an allowance, that was below the price made by the competitor.

Q. Did you ever hear of the Electric Light Oil Delivery?—A. Yes, sir.

Q. That was a company, was it, or a name simply?—A. As I remember, that was a name only.

Q. You were selling oil under the name of the Electric Light Oil Delivery in Philadelphia, weren't you?—A. That was our retail

department. The Electric Light Oil Works was our retail department.

Q. Well, you sell oil as the Atlantic Refining Company, don't you? You don't sell all your oil as the Electric Light Oil Delivery?—A. For a while the Electric Light Oil Works was the retail department of the Atlantic Refining Company.

Q. I know; but for a while it was simply a name that you used for selling oil, wasn't it?—A. No; not that I know of, not in my time.

11223 Q. Not in your time?—A. No, sir.

Q. Well, didn't you sell oil both in the name of the Atlantic Refining Company and in the name of the Electric Light Oil Delivery?—A. Retail?

Q. Yes.—A. No; not that I know of.

Q. Wasn't the Electric Light Oil Delivery held out by you to be an independent company?—A. Not to my knowledge, never; not since I was in Philadelphia.

Q. Did you advertise it as a Standard Oil Company concern?—A. No; nor as an Atlantic Refining Company concern.

Q. You did not advertise it as an Atlantic Refining Company concern or as a Standard Oil Company concern, did you?—A. No.

Q. Who managed it during that time?—A. Now, I can't recall. When—in 1903 and 1904?

Q. Yes.—A. I don't know who.

Q. Well, 1901 and 1902?—A. I don't know. That was before my time.

Q. Well, 1902 and 1903, when you were assistant manager?—A. Not in 1902; I wasn't there.

Q. You were there in July and August, 1902?—A. No; '3.

Q. Didn't you commence in '3?—A. 1903, yes; August 1, 1903.

Q. After that who managed it?—A. I think a man by the name of Reiger.

Q. Now, where was its office?—A. It had two offices, one at Tenth and Sedgley, and the other office was at Belmont station of the Atlantic Refining Company.

Q. During that time was it doing a can business?—A. A 1-gallon can business, yes; selling to consumers.

11224 Q. Selling to consumers?—A. Selling to the consumers.

Q. Known as the square can?—A. They sell in a square can; I don't know as it was known as a square can.

Q. It was a square-can business?—A. Yes; what we called our retail business.

Q. It was advertised as a separate concern from the Atlantic Refining Company, wasn't it?—A. No, sir.

Q. Well, it was not advertised as belonging to the Atlantic Refining Company?—A. I don't know as it was advertised at all.

Q. Well, it sold to the consumer in competition with the retail merchants, didn't it?—A. It was its retail business exclusively.

Q. Now, who kept track of the prices that the company charged—you?—A. No; I didn't have anything to do with that.

Q. You don't know what prices they charged?—A. No; not at that time.

Q. So during these rate wars here which you have been telling about, that square-can business was going on and you don't know what prices they were charging?—A. I don't know anything about what they were charging.

By Mr. CAMPBELL:

Q. The retail department did not come in competition with Charles K. Smith & Company?—A. No.

Q. Nor with Crew-Levick?—A. No.

Q. Nor the Union Petroleum Company?—A. That is a retail business exclusively, selling 1-gallon cans to households.

By Mr. KELLOGG:

Q. If your Electric Light concern sold in gallon cans to
11225 the customers of the merchants that Mr. Smith was selling to, it would be pretty close competition, wouldn't it?—A. Between the retail jobber and the store, yes.

Q. Yes, that is what I thought.

11226 LOUIS BLAUSTEIN, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Blaustein, you live in Baltimore?—A. Yes, sir.

Q. You are connected with the Standard Oil Company in Baltimore, are you not?—A. I am; yes sir.

Q. I believe you are not a native of this country?—A. I am not.

Q. Where were you born?—A. In Prussia.

Q. What part of Prussia?—A. Memlin; it belongs to Germany.

Q. That is in the eastern part of Prussia?—A. Yes, sir.

Q. Somewhat near the Russian frontier, is it not?—A. Yes, sir.

Q. And also near to Poland?—A. Yes, sir.

Q. Up to what age did you live there?—A. Up until 19.

Q. The age of 19?—A. Yes.

Q. What was your native tongue, Mr. Blaustein?—A. My native tongue was German, but I used to come in contact with different languages.

Q. Did you in the course of your youth, besides German, which you spoke as your mother tongue, also learn to speak other languages?—A. Yes, sir.

Q. Mention them.—A. I learned to speak the Russian, I learned to speak the Polish, and that is about all I learned over there. Of course I learned Hebrew, and I know a language they call Yiddish.

11227 Q. Have you, since you have lived in this country and in the course of your business experience, added some other languages to the list?—A. Yes, sir; I have learned a little Bohemian.

Q. How many does that make all together?—A. About seven.

Q. Seven?—A. Except English; I don't understand much of that.

Q. Well, including English, that makes seven, does it?—A. Yes.

Q. And you speak all of those languages with a reasonable degree of freedom, do you?—A. Except English.

Q. Well, we will judge of your English ourselves. Now, Mr. Blaustein, when did you first enter the employment of the Standard Oil Company?—A. In 1895.

Q. How were you then first employed, and where?—A. I started there on a commission basis.

Q. Where?—A. In Baltimore.

Q. What part of Baltimore?—A. South and East Baltimore. Most of my trade was in South Baltimore.

Q. How large a trade did you canvass there, how many customers?—A. Well, there were about a thousand or eleven hundred.

Q. About a thousand. They were largely grocers, were they?—A. Yes, sir.

Q. What was their nationality?—A. Oh, different nationalities—Americans, Germans, a good many of them Polish, Bohemians——

Q. Russians?—A. Russians, a few.

Q. Were a considerable number of them Jewish?—A. Yes, sir; about fifty per cent of them.

Q. Fifty per cent of them Jewish. I believe you yourself
11228 are a Jew?—A. Yes, sir.

Q. At that time what was the extent of your acquaintance with that trade, when you first entered the employment of the Standard Oil Company?—A. I used to be in business before I entered the employment of the Standard Oil Company.

Q. My question is, What was the extent of your acquaintance with this trade?—A. Well, I had all this trade.

Q. But you were well acquainted with them?—A. Well acquainted with them, yes, sir.

Q. That is, this thousand, or some such number, of customers, you knew them personally?—A. Yes, sir.

Q. Were you accustomed to talk to them in their own languages, their own native languages, that you mentioned?—A. Yes.

Q. And was the fact that you were of the same religion as many of them, some element in your success in acquiring their trade and holding it?—A. I suppose so.

Q. At any rate, you had at that time a certain hold through these means and others upon this particular class of trade there in eastern Baltimore?—A. Yes, sir, east and south.

Q. Or southeastern. Now, what was the arrangement between you and the Standard Oil Company at that time under which you sold oil?—A. I received a commission on every gallon of oil, from all

the trade I turned over to the company, that I have canvassed and sold with their tank wagons.

Q. You mean of all the trade you procured for the company?—A. Procured for the company.

Q. Who furnished the oil?—A. The Standard Oil Company.

Q. Who furnished the tank wagons?—A. Also the Standard Oil Company.

11229 Q. Who had charge of the selling—yourself?—A. No, sir. The company furnished me with a driver.

Q. No, you don't understand me. You found the customers and determined whether to sell them or not?—A. Yes, sir.

Q. In other words, the selling branch of the business was under your control, was it?—A. Yes, sir. I used to buy the oil and pay for it myself and collect from the trade; the company had nothing to do with that.

Q. You mean you used to buy the oil from the Standard Oil Company?—A. Yes, sir, they used to charge it to me personally.

Q. At a——A. At a certain figure.

Q. At a figure which represented a commission to you from the price?—A. Yes, sir.

Q. How long did that arrangement continue?—A. From 1895 until about June or July of 1897.

Q. And during that time I suppose you became very well acquainted with the trade, did you not?—A. Yes, sir.

Q. Were you accustomed to go around and see them all from time to time?—A. It was my business.

Q. You had a personal acquaintance, I suppose, with all the men to whom you sold?—A. Yes, sir.

Q. Did you?—A. Yes, sir.

Q. Now, in May, 1897, was there a change in the management of the Baltimore office of the Standard Oil Company?—A. There was.

Q. Who came there?—A. A man by the name of Mr. Crosby.

Q. And any one else?—A. Mr. Powell, after a few months.

Q. When did Mr. Powell come there?—A. Some time, I

11230 believe, in April or the first of May, 1897.

Q. April or May, 1897?—A. I would not say positively or exactly the month or date; somewhere along there.

Q. What was Mr. Powell's position at that time?—A. Mr. Powell had charge of the refined oil department of the Standard Oil Company in Baltimore at that time.

Q. Now, some little time after Mr. Powell came there did he have a conversation with you?—A. Yes, sir.

Q. What about?—A. Mr. Powell reduced it a quarter of a cent—my commission.

Q. Will you be kind enough to sit up? It is difficult to hear you when you have your hand against your face in that way.—A. I will obey your orders.

Q. Just sit up and speak as loud as you can, and as distinctly. Now, go on, Mr. Blaustein.—A. Mr. Powell has reduced me a quarter of a

cent in my commission. The manager before Mr. Powell, a few months before, reduced me one-quarter, and Mr. Powell came there and he tried to reduce me another quarter. It was on a Saturday, I believe, some time in June.

Q. What do you mean by saying he tried to reduce you?—A. He told me that the company can't afford to give me so much commission as they have been giving me; if I want to work for the company I will have to accept less commission. I told him I can't stand for it, that I don't know where I am going to land with the company; that the manager before reduced me a quarter of a cent and now you reduce me another quarter of a cent, and the next man maybe will reduce me another quarter, and I will work for nothing. So
11231 I told him I am going to quit, which I did. He told me that was the best they could do, and they can't do no more. After I quit——

Q. What do you mean by quitting?—A. I just left their employ.

Q. You mean you resigned?—A. I resigned; told him then and there; gave up my position, I couldn't work for the figure he mentioned.

Q. Now, that was when?—A. Sometime in June of 1897.

Q. What happened subsequently on that day?—A. I went over to see the Red "C" Oil Company.

Q. Where was the Red "C" Oil Company?—A. They were doing a tank wagon business in Baltimore.

Q. Where was their office?—A. On Calvert street; I believe it was 34.

Q. Whom did you see there?—A. I saw Mr. Fehsenfeld.

Q. What was Mr. Fehsenfeld?—A. Supposed to be the manager or president. I inquired who to see. I told the man in the office my mission, what I wanted to see him for, and he referred me to Mr. Fehsenfeld.

Q. What did you say your mission was?—A. I told Mr. Fehsenfeld that I had quit the Standard and gave the reason why.

Q. What reason did you give him?—A. Because they have reduced me a quarter of a cent a few months previous and they are trying to reduce me another quarter, which I could not stand for. And I told him at the time I am willing to go to work for them. I also told him at Baltimore, sure, I can turn all my trade over to them, providing he will give me a fair salary. Mr. Fehsenfeld asked me how
11232 much of a salary I would demand, and I told him. And he told me it is too much money, that he is willing to employ me under the salary of $12 a week. I suppose that is about as much as I smoke cigars in a month. And of course I did not accept it. I picked up my hat and I went back to see the Standard Oil Company. I went up to see Mr. Powell, and I asked him if my job was still open. He said he thinks it is. He asked me what is the trouble, and I explained to him that I went over to see the Red "C" Oil Company and they offered me $12 a week, and I think I had better stay with the Standard Oil Company. Mr. Powell told me that I can come back

to work for the company, but he thinks they are going to put me on a salary, and he would let me know on Monday.

Q. Now, just a moment.

Mr. KELLOGG. I do not see the slightest materiality of all this stuff. I object to it as immaterial. It doesn't amount to anything.

Mr. CAMPBELL. Mr. Fehsenfeld testified this man went over there and tried to get into his employ as a spy for the Standard Oil Company.

Mr. KELLOGG. Perhaps he did.

Mr. CAMPBELL. That is the materiality of it.

Mr. CRAWFORD. You will find the materiality of it later on, Mr. Kellogg.

Q. When you went to see Mr. Fehsenfeld on that Saturday, you had previously cut your connection from the Standard Oil Company?—A. I did, sir.

Q. You were not in the employ of the Standard Oil Company?—A. No, sir.

11233 Q. Did you go there for the purpose of being a spy for the Standard Oil Company?—A. I did not, sir.

Q. Or anybody else?—A. I did not. I went there for the reason to get a job.

Q. Did you go there for any other reason than to get employment with the Red "C" Oil Company?—A. I did not, sir; and if Mr. Fehsenfeld would have given me my price I would be with him, perhaps, to-day.

Q. Now, on the following week did you make a new arrangement with the Standard Oil Company?—A. Yes, sir. The company put me on a salary basis.

Q. Then, for some time after that, you continued, as I recollect, to sell the same trade that you had previously sold?—A. Yes, sir. I confined myself to the same business, the same trade.

Q. When did you first go out of the city of Baltimore on behalf of the Standard Oil Company?—A. I don't remember the exact date, but it was some time during 1897. I don't remember the month. It was, I believe, 1897.

Q. Some time in the year 1897?—A. I believe it was the fall of the year, August, or the latter part of July.

Q. Where was it that you went to?—A. Mr. Powell sent me——

Q. Wait a moment. Answer my question. Where were you sent to?—A. To Portsmouth, Virginia, and Norfolk, Virginia.

Q. Now, state how you came to be sent there.—A. Mr. Powell told me one day that they have got considerable trouble with the Standard Oil Company's agent and they are losing business in Norfolk and in Portsmouth. He asked me to go over there and

11234 investigate the conditions and report to him. I went to Portsmouth and I investigated. What I mean by investigating is, I went around to see a few merchants who are handling oil. I came across some of them who were buying from the Standard Oil Company's tank wagon, which used to come there once a week from

Norfolk. I also came across a good many of them who had been buying from the jobbers, barrel oil.

Q. Did you learn whether there were any causes of dissatisfaction there in the trade?—A. Yes, sir. The reason the merchants used to buy barrel oil, they claimed—I have seen also bills that they are buying half a cent less than the Standard Oil Company's tank-wagon price; they also complained a great deal about the tank wagon not coming to Portsmouth often enough.

Q. Do you mean they complained that the Standard's tank wagon did not go to Portsmouth often enough?—A. Yes, sir; often enough.

Q. Any other cause of complaint there?—A. Not in Portsmouth. And I went to Norfolk and I have investigated——

Q. Well, what did you do?—A. I went around to the stores who were handling oil, and I didn't represent myself as Standard Oil Company or any one else; I didn't try to sell any oil; simply general talk about different business, and I also talked about the oil business. In fact, a good many people in Norfolk knew me for years. I used to sell oil there, oh, years ago. And they knew that I am with the Standard Oil Company of Baltimore. I wouldn't say all of them knew, but a good many of them knew. I have learned there the trade were dissatisfied with the Standard Oil Company for different
11235 reasons. The first reason, the Standard Oil Company used to employ a colored man on their tank wagon.

Q. When you say the Standard Oil Company, you mean the agent of the Standard Oil Company?—A. The special agent at Norfolk.

Q. Who was he?—A. Mr. Farquharson. He used to employ a colored man as tank-wagon driver. Norfolk is a southern town, and they objected to that.

Q. You mean that the trade of the white merchants objected to buying from colored drivers?—A. Yes, sir. Farquharson also had what they called a 20-gallon system. He would not sell anybody unless he buys 20 gallons. A man wants 5 or 10 gallons, and if he hasn't got any more money to pay for it the tank wagon used to drive away and leave him without oil. I have also learned——

Q. And was that a cause of complaint on the part of some of the trade?—A. Yes, sir; that was part of the complaint of part of the trade that did not buy from the Standard Oil Company. I also learned that a jobber by the name of Fivel, who used to have a little tank wagon in Norfolk, and of course by the Standard having those colored drivers and the 20-gallon system, why he done the business.

Q. Now, you went around generally through the trade in Norfolk making these inquiries and gathering up this information, did you?—A. Yes, sir.

Q. Did you have occasion to see Mr. Fivel?—A. The first evening when I arrived in Norfolk, Fivel looked me up at the Norfolk Hotel. He approached me and told me that he heard during the
11236 day—that was the day when I investigated—I was around amongst his customers and I went all through Norfolk and

learned about Fivel doing business there. He has learned that I have been trying to start to sell oil in Norfolk, that was what his customers told him. He told me if I have any idea of establishing myself in Norfolk that he has been looking for a buyer and he is willing to sell out his business. I told Mr. Fivel that I have no idea of buying him out, in fact I didn't know that he was in Norfolk, but he can give me some figures, the price, what he has got to sell, and I will report to the company and let him know, which he did.

Q. He gave you a price, did he?—A. Yes, sir.

Q. And what did you do in consequence of that?—A. I went back to Baltimore and I have reported to Mr. Powell all that I have ascertained.

Q. You mean all that you had ascertained about——A. About Portsmouth.

Q. The conditions in Portsmouth?—A. The conditions in Portsmouth; also the conditions in Norfolk, and about this party, Fivel.

Q. Did you tell him about what you had learned in regard to the Standard's agent there in Norfolk?—A. I did, sir.

Q. Was Portsmouth at that time under the control of the same agent, Mr. Farquharson?—A. Yes, sir.

Q. He had both Norfolk and Portsmouth?—A. Norfolk and Portsmouth. The tank wagon used to go from Norfolk to Portsmouth.

Q. You also told him about Mr. Fivel?—A. About Mr. Fivel making this proposition to me to buy him out.

Q. What was it Mr. Powell told you?—A. He asked me
11237 what he has got to sell and what he wants for it, and I told him. His answer was he will advise me in a few days. About a week later Mr. Powell told me to go up to Norfolk and see this party, Fivel, and give him an offer for his business, which represented a small tank wagon, an old horse, and a few dozen of 5-gallon cans and the good will of his business, providing he will go with me on his routes for 30 days and he will turn his business over to me. Mr. Fivel didn't accept my offer the first time, but he came back in a few days and accepted it. I went back to Baltimore, reported to Mr. Powell that I have bought Fivel's equipment and his good will, but I didn't make no agreement or contract between him at all—just simply my word for it—I didn't make no agreement with him at that time.

Q. You mean no written agreement?—A. I didn't make no written agreement; I didn't give him no deposit.

Q. What do you mean by giving him no deposit?—A. If you buy a man's business you give him something to bind the deal.

Q. You mean you did not give him any money?—A. No.

Q. What was done about the money?—A. I asked Mr. Powell to give me the money. A man wants his money if you buy his business.

Q. Oh, I see. Go on.—A. Mr. Powell wrote a letter of introduction to Mr. Farquharson, who was special agent at Norfolk, and told him all about this Fivel's deal, and also instructed him to put up this $400 with some good reliable merchant, so Fivel will

live up to his agreement and go with me on his route for
11238 thirty days.

Q. This was a letter introducing you to Mr. Farquharson?—A. To Mr. Farquharson; yes, sir.

Q. What did you do with the letter?—A. I went over to Farquharson, to his office, when I got to Norfolk, and I gave him the letter, and Farquharson has arranged to put up the money with a merchant on Water street, a wholesale shoe man.

Q. Well?—A. And I started to go on Fivel's route with him.

Q. Fivel accepted those conditions?—A. Accepted those conditions; yes, sir.

Q. And you started around with him?—A. He started with me.

Q. To see these customers?—A. To see his customers, to go to every one of his customers, as we did, along on his route. While we were going around on the route Fivel told me that it would be a good idea for the company to have his company under a different name. I asked him why. Well, he told me for the same reason that the people down there are so very prejudiced against the Standard Oil Company for the reason about the colored people being on their wagons.

Q. Colored drivers?—A. Colored drivers; also about this 20-gallon system. Some of the merchants, he told me, would pay more money for oil, before they would buy from the Standard Oil Company on account of these various reasons. I thought at that time that it would be a good idea, and while I passed by an office or warehouse I have noticed a sign by the name of the Eureka Harness Oil. So I thought at that time that "Eureka" would be a pretty good
name for this company. But in a few days I went back to
11239 Baltimore and I have told Mr. Powell about Fivel's suggestions, and I told him also about the Eureka name. He replied to me to go ahead and sell oil under the Eureka Oil Company, but everybody knew it was the Standard Oil Company.

Q. Now, what outfit did you get for the business which you then established?—A. Outfit from the Standard Oil Company?

Q. No; from anybody.—A. I got a small tank wagon from Fivel, which I could not use; I had to send it back to Baltimore to have it fixed at the Standard Oil Company's shop, to have it painted, and put the name "Eureka Oil Company" on it. I sent it back to Norfolk. Mr. Farquharson, who was special agent at that time, bought me a horse for the Eureka Oil Company's business. I was present when he paid for it. He also bought a set of harness for that horse, on Union street, and he himself put the harness upon the horse, with the harness maker.

Q. Were you told by Mr. Powell why you were sent to Norfolk to open up this separate business?

Mr. KELLOGG. That is objected to as hearsay.

Q. You may answer it.—A. He told me that he thinks it would be a good idea by opening this business under the Eureka, it will put Mr. Farquharson to work; he will get busy. He says that I am going

to learn Mr. Farquharson how to sell oil in Norfolk and in Portsmouth, because Mr. Farquharson has been there for a good many years, and instead of increasing his business it has been decreasing every month.

11240 Q. Do you know whether Mr. Farquharson's attention was called to these points about the colored driver and about the 20-gallon can rule?—A. Well, you see——

Q. I mean after you had made your report.—A. Oh, yes, he did, and it was done away with. Mr. Powell called Mr. Farquharson to Baltimore, and explained to him the reason he had the trouble, the competition, and the people are prejudiced against the Standard Oil Company; that it is his fault because of his 20-gallon system and about the colored drivers, and he ordered him at once to take the colored drivers from the wagons and also to change his system, to sell anybody 5 gallons or a hundred at the same price.

Q. How long did Mr. Farquharson stay there as special agent after that?—A. Oh, about nine months or a year; I don't remember exactly.

Q. Then he was laid off?—A. Laid off.

Q. Now, what did you do after you came back to Norfolk and took up this business which you had purchased from Mr. Fivel?—A. I have rented a place from Fivel, the old place he used to have on Princess Anne avenue, right on front of the street, and I bought all my gasoline from the Standard Oil Company's plant at Norfolk, or fifty per cent of my bulk oil from the Standard Oil Company's plant; I used to get some barrel oil direct from Baltimore, from the Standard Oil Company.

11241 Q. What did you do about selling oil and obtaining business?—A. I employed a driver and I told him to get all the business he can.

Q. Did you go around yourself and see the trade?—A. Yes; I used to go there every day with the man.

Q. Canvass it personally?—A. Canvassed all the trade, everybody's trade.

Q. What was the character of the trade you canvassed?—A. Stores.

Q. Groceries?—A. People who were selling again; grocers.

Q. What about the nationality of the people that you sold to there?—A. Fivel's trade was about 50 per cent Hebrew people—of his business.

Q. And many of them foreigners?—A. Yes, sir.

Q. Of foreign birth?—A. Yes, sir; most all of them.

Q. Many of them that talked the various languages that you referred to?—A. Yes, sir.

Q. In going about among them, did you speak with them in their own languages?—A. Yes, sir.

Q. You found that a useful adjunct to your salesman abilities, did you not?—A. Yes, sir, very.

Q. You formed a personal acquaintance with them in that way?—A. I did.

Q. Did you confine your canvass to any particular set of customers, or did you go to all of them?—A. Oh, all the trade.

Q. All the trade in the city of Norfolk?—A. All the trade in the city of Norfolk. I have told my driver to see everybody
11242 and tried to sell him oil.

Q. Did that include some who had previously been sold by the Standard Oil Company direct?—A. Yes, sir; direct. In fact, there was nobody else there at that time except the Standard Oil Company.

Q. How long did you remain there doing business under the name of the Eureka Oil Company?—A. About a year or a year and a half; I don't remember exactly.

Q. Do you know whether it was known in the trade that you were connected with the Standard Oil Company?—A. Yes, sir; everybody knew it. Everybody knew it was the Standard Oil Company's business.

Q. During the year or year and a half that you were operating this business at Norfolk, were you sent to another town?—A. Yes, sir; again Mr. Farquharson's—one of his points, Durham, North Carolina.

Q. How did you come to go to Durham, North Carolina?—A. Mr. Powell told me at that time to go to Durham and investigate, the same as I did in Norfolk. He said, "We have got a man there on a commission basis, and we are not having the results at Durham. He says, "Durham is a town which has been increasing in population all the time, and our sales is decreasing."

Q. What was the man's name to whom he referred?—A. A man by the name of Griswold.

Q. Now, just a moment before we take that thing up. I neglected to ask you one question. At what prices did you sell
11243 oil in Norfolk when you were doing business there as the Eureka Oil Company.—A. The Standard Oil Company's prices.

Q. Did you at any time sell at a price lower than the regular Standard Oil prices?—A. No, sir.

Q. Now, go on and state what you did at Durham.—A. I went to Durham, and I have learned that this Mr. Griswold is a commission man who gets so much a gallon for selling oil; that the company furnish' him a tank wagon, but that he himself had to supply the horses and the driver. While at Durham proper Mr. Griswold had about 80 per cent of the business; Durham is situated in different parts. There is East Durham, there is West Durham, and a little town by the name of Hayville, or Haytown, that is about a mile and a half away from Durham. The roads over there were very rough, and Mr. Griswold, to save his horses, would not go over to those places I have mentioned to sell his oil. Naturally the competitor, the Red "C" Oil Company, had a broker there by the name of Perry; he had there a harvest from the oil business. I have also learned——

Q. Now, I want to make that point clear. Exactly what was the reason why Mr. Griswold had not been more successful outside of Durham?—A. I beg your pardon——

Q. I understand you to say that Mr. Griswold had not succeeded in getting business outside of Durham itself?—A. He never tried to get it.

Q. Well, he had not gotten it, anyway?—A. No, sir.

Q. What was the reason?—A. Because he would try to save his horses.

11244 Q. And would not drive——A. Would not drive the distance over there. It did not pay, for the commission he made, in other words, from the company, to kill his horses.

Q. Did you also ascertain something in regard to the business of other dealers there? Did you find out anything about the business of any other concern that was trading in there?—A. In the oil business?

Q. Who was selling this trade outside of Durham?—A. The Red "C" Oil Company had a broker by the name of Mr. Perry, and the Standard Oil Company.

Q. Was Perry selling himself? Did he go around himself?—A. He had salesmen. He used to be a broker, selling meats, lard, etc.

Q. What kind of oil did they sell?—A. They sold there the oil by the name of Red "C" oil, supposed to be red oil.

Q. Was it in fact red?—A. Yes, sir; it was red.

Q. Did you learn there anything about representations which the Red "C" salesmen were making about that oil?—A. I did, sir.

Q. What were they?

Mr. KELLOGG. That is objected to as hearsay.

A. The Red "C" salesman has told all his trade that the Red "C" oil comes naturally, it is a natural product from the ground, and he has been getting very fancy prices for it.

Q. For what?—A. For the oil.

Q. What prices, I mean? Do you recollect?—A. Well, he has got from 18 to 22 cents a gallon in barrels.

11245 Q. At what price was the Standard selling it?—A. 14 cents a gallon.

Q. From whom did you learn that they were making these representations?—A. From the merchants.

Q. The customers?—A. The customers who had been buying their oil. By me trying, by investigtaing, they used to show me their bills, what they paid for oil to the Red "C" Oil Company, stating that their oil is a natural product, and they are willing to pay the money for it.

Q. What did you do in consequence—what did you do after you had gotten this information?—A. I reported this to Mr. Powell, and he instructed me to go back to Durham and appoint some commission man who can handle my oil on a commission, which I did. I appointed a man by the name of C. C. Thomas & Company, and I went around with Mr. Thomas to see the trade, and we have sold some oil.

Q. Did Mr. Powell tell you why you would be sent down there to Durham?

Mr. KELLOGG. Same objection, as hearsay.

A. Yes, sir; I have stated before the reason. The man has not been attending to his business.

Q. What man?—A. Mr. Griswold. He had not got enough business which the company thought he should get. Durham has been increasing all the time, and the company has lost business there.

Q. How was your going there going to help that? How was your going there to help the situation which you speak of?—
11246 A. You mean when I went there to investigate first, or by being in Durham?

Q. I want to know what Mr. Powell's reasons were for sending you there?—A. Just to show Mr. Griswold that it is their fault that the company is not getting a good percentage of the business.

Q. That it was whose fault?—A. Mr. Griswold's fault; in other words, Mr. Fahrquarson's fault. He was the head man. He had charge of Griswold.

Q. To show to them, then, that it was perfectly possible to get the business?—A. Yes, sir; it is.

Q. Then did you go around to see the trade there, you say, in Durham?—A. Yes, sir; with Mr. Thomas.

Q. What did you talk about to the customers?—A. We explained to the people who had been buying the Red "C's" red oil at such fansy prices that this is nothing but a colored product.

Q. A colored product?—A. Yes; that we will sell them the best Water White oil for about 13½ cents a gallon, and we will also sell them 5 pounds of alkanet root, with which they can color their own oil, and save from $2 to $3 a barrel on it.

Q. Do you remember any particular merchant with whom you took that up first?—A. A man by the name of Mr. Jordan.

Q. Tell about him.—A. I have told Mr. Jordan that Mr. Thomas, who was a good friend of Mr. Jordan (he was selling him his groceries), would be responsible for it; if after he colored the oil
11247 himself, and if the trade won't be satisfied with this oil, that Mr. Thomas will take the barrel oil out from his tank, and won't charge him anything, what he has sold.

Q. Mr. Thomas was your agent?—A. My agent.

Q. What did Jordan do?—A. He accepted the proposition, and we have sold him a barrel of oil.

Q. What kind of oil?—A. Water White.

Q. Water White oil?—A. Yes, and also sold him 5 pounds of alkanet root, and he has tried it, and it worked like a charm.

Q. What do you mean by that? What happened?—A. Well, just as good as the Red "C" oil that he had to pay fancy prices for.

Q. That is, you mean he produced red oil?—A. Yes, sir.

Q. What did he do about that?—A. Who—Mr. Jordan?

Q. Yes; I mean in consequence of it?—A. Mr. Jordan gave Mr. Thomas a note to the rest of the customers whom Mr. Thomas has tried previous to get them to do the same thing, which they refused; but after Mr. Jordan had explained to the trade in the note that the oil is just as good and they need not to hesitate to buy, that he has tried it, that it is just as good as the oil he has been paying 20 or 22 cents a gallon for, they all done the same thing. I remember distinctly I ordered from the Standard Oil Company a bale of 200 pounds of alkanet root and shipped it to Mr. Thomas, so he can distribute in 5-pound lots with every barrel of oil to his trade.

Q. What was the consequence upon your trade of this exposure of the Red "C" Oil Company's representations?—A. Well, we have done a right smart amount of business there.

11248 Q. What about these people to whom you made this explanation?—A. They have told the Red "C" man that they have been overcharging him, they have been gouged all these years, and they would rather give us the business, even if they met the price.

Q. Did they give you the business?—A. Yes; they gave it to Mr. Thomas.

Q. Mr. Thomas secured their business?—A. Yes, sir.

Q. At what prices did Mr. Thomas, representing you, sell oil at there in Durham?—A. The Standard Oil Company's price. Mr. Thomas was a commission man, as I have stated before, and I gave him the Standard Oil Company's price, which he had to govern himself by. He could not sell for any less, because his commission was very small.

Q. The point is whether he did sell for any less?—A. He did not.

Q. He sold at the Standard's price?—A. He sold at the Standard Oil Company's price.

Q. And if that changed, he changed?—A. Yes, sir.

Q. But he did not sell under the Standard Oil Company's prices?—A. No, sir.

Q. Do you know whether Griswold was spoken to in regard to this matter of his not going outside the city of Durham?—A. Yes, sir.

Q. What happened?—A. Mr. Powell has written to Farquharson, which I have seen the letter before it was mailed, explaining to him how bad——

Mr. KELLOGG. One moment. That is objected to. The letter is the best evidence.

11249 A. ——what condition Durham was, and Mr. Griswold after hearing, I suppose, from Mr. Farquharson, sent his wagon——

Mr. KELLOGG. Never mind. Don't say you suppose. Tell what Mr. Griswold did.

A. Mr. Griswold sent his tank wagon all through the places where he did not go before.

Q. What you know of your own knowledge is that Mr. Griswold, some time after you had made this report to Powell, began to send

his wagon outside of the city of Durham?—A. Yes, sir; that is what he did.

Q. How long did Griswold stay there in the employ of the company after that?—A. He was not there quite a year, but I could not tell the date or the month, because I was not there all the time.

Q. But he was removed or was laid off, was he?—A. Laid off.

Q. While you were doing business in Durham, did you go to another place in North Carolina?—A. Yes, sir.

Q. Burlington, was it?—A. Mr. Powell sent me to Burlington, North Carolina. He told me at the time that they have got a superintendent of tank wagon in Burlington who goes occasionally on a spree for four or five days at a time; that is what he has heard from other people. He sent me over there to investigate around the town and see of any of those people had ever been neglected, in other words, in what condition the town was. When I got to Burlington, the same night, I found the same man (Mr. Plummer was his name) drunk in the hotel.

11250 Q. He was the——A. He was the superintendent at Burlington; he had charge of two tank wagons.

Q. For the Standard Oil Company?—A. For the Standard Oil Company. Of course he did not know the Standard Oil Company, except the special agent. Burlington belonged to the Richmond field, but, you see, Plummer has nothing to do with those points where the special agent has got entirely charge of them.

Q. What did you do first?—A. I went out in the morning, and I have learned in Burlington practically the same condition what I did in Durham.

Q. Well, what?—A. Mr. Plummer has not been out for three days, and half of his customers was without oil. The Red "C" Oil Company had a broker there who handled their oil, by the name of Thurston, who had an agency, and he used to sell the oil, the same brand, what they called the Red "C" red oil, for the same figures if not a little more than Durham. I reported this to Mr. Powell.

Q. Did he in selling them make any representations in regard to the oil?—A. Yes, sir; he used to tell them "This is a red oil, comes red direct from the wells." The Standard Oil Company's price was about 13½ or 14 cents, and of course they could not very likely sell their oil at those figures. They were compelled to tell them something to make some money out of them. Their oil was not any better than the Standard Oil Company's red oil. It was a misrepresentation to make money.

Q. What did you do?—A. I reported this to Mr. Powell, and he authorized me to go there and employ a commission man like

11251 I did in Durham, which I did.

Q. What was his name?—A. A man by the name of Williamson & Brothers.

Q. Did Mr. Powell tell you why you were sent to Burlington?—A. Yes, sir.

Q. What did he say?—A. To wake up Mr. Plummer. He said, "He is asleep. Show him how to sell the oil, and show Mr. West (who was special agent at Richmond) that somebody can sell oil in Burlington if he can't; if his man rather can't."

Q. What did you do when you went back there?—A. I appointed Mr. Williamson and I went out with him, and we have explained, the same as I did in Durham, to the merchants about the red oil, and we have done some business.

Q. Did you make the same offer in regard to furnishing them coloring material?—A. Yes, sir; the same identical thing.

Q. Was the offer accepted?—A. Accepted. We also sold to the Red "C" Oil Company's agent, Mr. Thurston, 10 barrels of oil, and we gave him the coloring matter for himself to color it.

Q. These merchants accepted your white oil and the coloring matter?—A. Some of them did that. Some of them did, of course, and some of them did not, at first.

Q. Some of them did it anyway?—A. Yes, sir.

Q. Did they try the experiment?—A. They did.

Q. And were they satisfied with the result?—A. Yes, sir.

Q. Did you thereafter sell them? Did you sell them after that?—A. Mr. Williamson sold them.

Q. I mean Mr. Williamson who represented you.—A. Mr.
11252 Williamson, yes, sir, continued selling them. He also sold their own agent.

Q. How about the rest of these men who had been buying Red "C" oil, who you say at first would not believe you? Did they later on?—A. Yes, sir; later on they came in line. Mr. Williamson was a man known in town and very well liked, a man of good reputation, and he got them to take oil. He also got a good many of the Standard Oil Company's customers.

Q. Did you thereafter supply him with coloring matter?—A. Yes, sir.

Q. To distribute to these people?—A. I sent him a hundred pounds, and he used to distribute it himself accordingly.

Q. At what prices did your agent there sell oil to the trade?—A. The Standard Oil Company's price.

Q. At no time less?—A. No, sir.

Q. How long did you continue in business in Burlington—that is to say, how long did Mr. Williamson, representing you, continue in business there?—A. Until the Standard Oil Company of Baltimore forced Mr. West to make a change in his man in Burlington. He made him resign.

Q. Mr. Plummer?—A. Mr. Plummer, and Mr. West has appointed someone else who knew his business and attended to his business; and after a while, why, I pulled out of Burlington.

Q. How long did you stay in Durham?—A. I stayed in Durham longer than I did in Burlington.

Q. About how long?—A. It is very hard for me to remember—about a year and a half.

Q. You were subsequently sent to other towns on similar errands, were you not, by Mr. Powell?—A. Yes, sir.

11253 Q. Do you remember going to Richmond?—A. I do.

Q. When was that?—A. That was in the year of 1898, the latter part of 1898.

Q. Who was the Standard agent in Richmond?—A. Mr. West.

Q. What were your instructions upon going to Richmond?—A. To investigate, to go round the town and go to see those merchants who were handling oil, and find out the reason why the company do not sell them, which I did.

Q. You went around?—A. Yes, sir.

Q. Did you find any reason affecting Mr. West?—A. I found in Richmond practically the same thing as in Norfolk, but Norfolk had more colored tank-wagon drivers than Richmond had. Richmond only had two of them; and I also found the 20-gallon system in Richmond, as it was in Norfolk; and there were a company by the name of Southern Oil Company, and they have done right smart business there, I suppose on account of those being prejudiced, and about the 20-gallon system.

Q. Did you report that?—A. I reported to Mr. Powell. After about a week or two he sent me to Richmond to look after a location, and told me to start in business there under the name of the Argand Refining Company. I went to Richmond, and I have located a location, rented a place, and I went back to Baltimore. Before I started in business there at Richmond, the Southern Oil Company had a manager by the name of J. H. Warden. He distributed circulars all over town, stating that Argand Refining Company is nothing but the Standard Oil Company.

11254 Q. What did you do next?—A. I got a tank wagon from the Standard Oil Company of Baltimore, had it sent to Richmond, and I done business under the Argand Refining Company's name.

Q. Did you canvass the trade after customers?—A. While I was with the tank wagon?

Q. No; at any time.—A. Yes, sir, while I was in business there I did.

Q. And did you go generally to the trade? Did you go generally through the trade?—A. I used to go with the tank wagon.

Q. In your canvassing and trying to get business, did you go generally to the trade?—A. Yes, sir; everybody's customers.

Q. Including——A. Standard Oil Company's customers.

Q. Including some who had been Standard Oil Company's customers?—A. Yes, sir; and some Southern also.

Q. Did you get any customers from the Standard Oil Company?—A. About 75 per cent of it.

Q. 75 per cent of what you had——A. Yes, sir.

Q. ——of what you had or of what they had?—A. Of what I had.

Q. Did Mr. Powell tell you why you were sent to Richmond?—A. Yes, sir; Mr. Powell told me that Mr. West has been with the

company a good many years, and he should know better than having, after I reported to him about the colored drivers and about the 20-gallon system, that he should have known better than that, by having competition there in that town, to let the competitor
11255 sell 5 and 10 gallons of oil, and the Standard Oil Company's tank wagon not less than 20 gallons. He said, "After you will be there Mr. West will wake up. He will get busy."

Mr. KELLOGG. He was asleep, was he?

WITNESS. Sir?

Mr. KELLOGG. Was he asleep, too?

WITNESS. Sometimes; at nights.

Q. At what prices did you sell oil in Richmond?—A. The Standard Oil Company's tank wagon price.

Q. Never less?—A. Never.

Q. How did you get your business in Richmond? I mean what arguments did you use in going around to merchants to get business?—A. The merchants used to tell me that the Argand Refining Company is nothing but the Standard Oil Company. I never denied it. I used to ask a man, "Are you positive of that?" He said, "Yes; I know Warden's circular. I have seen it." I said, "Why, if you know it, there is no use for me to explain to you."

Q. Very well. What did you say to the customers to induce them to buy from you? What method did you employ?—A. Well, just to—I employed a man who was well known in Richmond, who used to be a merchant, and through sickness and bad luck he came down, and it was really the driver who got the business on personality.

Q. What was his name?—A. Young.

Q. And you say he got the business largely through his personal acquaintance?—A. Yes, sir.

Q. And friendship?—A. Friendship. He was a merchant
11256 once upon a time.

Q. He was a Southerner, was he?—A. Yes, sir.

Q. And had lived there for many years?—A. Oh, yes; it was his home.

Q. Well known in Richmond?—A. Yes, sir.

Q. Some time later you had dealings with the Southern Oil Company, didn't you? Was that the name of it?—A. The Southern Oil Company.

Q. Tell us about that.—A. It was one Saturday evening, I believe, or Monday night, I don't remember exactly. It was the last of the week or the beginning of the week—no; it was Friday night. I went to Baltimore and I met Mr. Warner Moore.

Q. Who was Warner Moore?—A. He was the owner of the Southern Oil Company. Mr. J. H. Warden was manager.

Q. Mr. Moore was the owner?—A. Yes, sir.

Q. Was Mr. Moore living in Richmond?—A. Yes, sir.

Q. Was he in business there?—A. He was in several different businesses there.

Q. What businesses?—A. He had two flour mills, he was interested in a large coal business, he had several lime quarries, and he was a director of the Richmond Traction Company.

Q. Then he was a man of large means, was he?—A. Yes, sir; I would like to have it.

Q. And was he personally at this time giving any attention to the Southern Oil Company?—A. Well, I didn't know, until he told me, by meeting him in the car going to New York, I didn't know whether he gave personal attention to it or not. I knew Warden was the manager.

11257 Q. Very well. Then tell about this conversation.—A. I met Mr. Moore and I introduced myself to him, and he was glad to see me, and he told me, he says, "Why, you are nothing but the Standard Oil Company. Why don't you call yourself Standard Oil Company?" I told him the same thing. Everybody knows the Argand is the Standard Oil Company, as far as that is concerned. He said, "Are you going to continue business, selling in barrels?" I said, "No, sir; I expect to erect storage tanks." He says, "I tell you what I think I am going to do." He says, "I am about to sell my business, my oil business; it has been a losing proposition to me for a couple of years." He says, "Very likely you have heard about Mr. Warden." I said, "Yes; I heard about him, that man that used to go on sprees six days out of seven." He said, "When you come back to Richmond in a week or so, come to see me." He says, "If you will give me my figure, I will sell you my business, and you won't have to erect any tanks." I have reported this to Mr. Powell, and he told me to go to see him and get his price, also what he has got to sell. I went back to Richmond, and went over to see Mr. Moore, and I asked him what he has got to sell; which he gave me everything, on a piece of paper, and what he want for his business.

Q. What was it that he said he had to sell?—A. Four tank wagons, eight horses, harness. Oh, he had about a thousand or fifteen hundred empty barrels, and the warehouse and the ground, a piece of land that the warehouse was on belonged to him. I told Mr. Moore that his figures are too high, I would not think to give those
11258 figures to my company, and I also do not care to buy his land.

Q. You say you would not give those figures to your company. You mean what we commonly mean when you say that you would not submit his offer?—A. No, sir; I would not submit the offer. I thought it was too much money. I know that the company would not pay that. So he told me to give him an offer. I have seen Mr. Powell in the meantime, and I explained it to him, and he told me to offer him so much money, providing he will turn over all his customers, the ground, the building, and will take an inventory of oil at market price, and the good will of the Southern Oil Company. That must be specified in the sale.

Q. Did you subsequently see Mr. Moore?—A. I saw Mr. Moore, and he would not accept my offer at that time.

Q. Did you later come to terms with him?—A. Yes, sir; we came to terms.

Q. You bought this property that you speak of?—A. Yes, sir; also bought the good will of the Southern Oil Company. That was specified in the bill of sale—I believe in the deed—if I am not mistaken.

Q. What did you do in consequence of that purchase?—A. I don't understand you, Mr. Crawford.

Q. What was the next thing you did in Richmond after buying out the Southern Oil Company?—A. I went in business there under the Southern Oil Company's name.

Q. Did you continue your business under the name of the Argand Refining Company?—A. No, sir.

11259 Q. You mean you consolidated that with the Southern Oil Company?—A. We consolidated; yes, sir.

Q. And thereafter you did business under the name of the Southern Oil Company?—A. Yes, sir.

Q. For how long?—A. That was about 1898 or the beginning of 1899; up to about 1900—the latter part of 1900.

Q. At what prices did you sell oil when you were trading under the name of the Argand Refining Company?—A. The Standard Oil Company's price—tank-wagon price.

Q. And at what prices did you sell oil when you were trading under the name of the Southern Oil Company?—A. The Standard Oil Company's price.

Q. Never less in either case?—A. Never.

Q. How long after you first went to Richmond did Mr. West continue there in the employ of the Standard Oil Company?—A. Oh, about six or seven months; I could not tell positively, exactly, but he was removed.

Q. He was removed?—A. Yes, sir.

Q. Before you bought the Southern Oil Company how much business had you built up there under the name of the Argand?—A. Oh, a small tank wagon—about 450 or 500 gallons a day.

Q. When you bought the Southern Oil Company did you acquire a considerable trade with it?—A. They did not have very much trade. They had some trade.

Q. They had some trade?—A. Yes, sir.

Q. And what there was came to you, I suppose?—A. Yes, sir.

Q. Was the name, Southern Oil Company, very well known there?—A. Well, yes; they have been there for a good while. Everybody knew the Southern Oil Company.

11260 Q. Had a good will, had they, some?—A. When they started they had, but not when Mr. Warden went to the bad they didn't.

Q. To what place were you next sent by Mr. Powell on a similar errand?—A. Mr. Powell told me that——

Mr. KELLOGG. That is objected to as hearsay.

Mr. CRAWFORD. Read my question. Just pay attention to my question.

(The reporter read the question, as follows: To what place were you next sent by Mr. Powell on a similar errand?)

A. To Harrisonburg, Virginia.

Q. State how you came to go there.—A. Mr. Powell told me that they have a salesman there for a good many years, but for the last year or so he is going back in his sales, that the company is not doing the business they should do in the valley of Virginia. He told me to go there and investigate, the same as I did in the other places.

Q. What did you do in consequence of this?—A. I went to Harrisonburg, Mount Jackson, and Edinburgh, all along the route, and I found that the tank wagon had been neglecting customers; they would not go there often enough, was not obliging, was not accommodating, and the Red "C" Oil Company had the same spiel with their red oil that they had in Durham and Burlington, the same song.

Q. Don't talk slang, Mr. Blaustein. Just say plainly what you mean by that.—A. The same argument. In other words, they used to tell the people that they are selling them red oil which came
11261 direct from the wells red, and got the fancy prices for it, and the company's man was unable to overcome it.

Q. You mean the Standard's man was unable to overcome it?—A. Yes, sir; the salesman.

Q. What was his name?—A. Greathead. I went to Harrisonburg, Virginia, and I have appointed a commission man——

Q. Before doing that you reported back this to Mr. Powell?—A. To Mr. Powell.

Q. What did Mr. Powell tell you to do?—A. He told me that the only thing to do is to go over to the valley of Virginia and sell oil there, or appoint somebody for you under the Southern Oil Company's name; and by doing so you will find Mr. Baughman, who had charge of the valley of Virginia at that time (he was special agent for the company), will get busy and he will try to sell oil more than he is doing now.

Q. Mr. Baughman was——A. Special agent.

Q. Was special agent where?—A. Of the Standard Oil Company of Washington.

Q. Oh, at Washington?—A. He was in Baltimore at the time.

Q. In Baltimore?—A. Yes, sir.

Q. And Mr. Greathead, of whom you spoke, was subordinate to him, was he?—A. Yes, sir; he was; he appointed him.

Q. Mr. Greathead was the salesman who canvassed that district?—A. He reported to Mr. Baughman.

Q. Then you went there to Harrisonburg, and what did you do?—A. I appointed J. M. Snell & Co. as my broker, and I went out with Snell's son, and we have sold the oil, and we have showed to the people how this oil is nothing but a colored product, and we also showed——

11262 Q. You mean a manufactured colored product?—A. A manufactured colored product.

Q. Not a natural-colored product?—A. Manufactured, yes, sir; and Snell also sold to 50 per cent of the Standard Oil Company's customers.

Q. And that was true in Harrisonburg and in any other place, was it?—A. Yes, sir.

Q. How long did that continue? How long were you there in selling through him?—A. About a year or so. I am not very well posted with the dates.

Q. Was there any change in the personnel of the Standard Oil Company's employees during that time?—A. Yes, sir; the company has done away with Mr. Greathead.

Q. Removed him?—A. Removed him.

Q. Put someone else in his place?—A. Yes, sir.

Q. While you were in business at Harrisonburg and at these other places associated with Harrisonburg, and before you went to the next place, at what prices did you sell oil?—A. J. M. Snell sold at the Standard Oil Company's price.

Q. And was that true all the time you were doing business there?—A. Yes, sir.

Q. Never less?—A. Never.

Q. What was the next place you went to?—A. The company's business has been growing and we have done——

Q. What company's business?—A. The Southern Oil Company—the Standard Oil Company.

Q. The Standard Oil Company?—A. Yes.

Q. All right.—A. And it was necessary for us to look for
11263 a bulk station, as we used to pay freight twice for the same oil. We used to get our oil in tank cars from Baltimore to Richmond, and then barreled it at Richmond and reship it to Harrisonburg.

Q. Are you speaking of the Southern Oil Company now?—A. Yes, sir; the Southern Oil Company.

Q. All right.—A. And Mr. Powell told me it is necessary for me to look around for a good town where there is a good shipping point, and to erect a tank and get our oil direct from Parkersburg. I have found Winchester, Virginia, has got a straight road on the B. & O. to Parkersburg, and I went to Winchester and tried to locate there—to look for a siding.

Q. What did you do? Go on. What further did you do?—A. When I got to Winchester I heard that there were two jobbers were handling oil. One was Baker Bros., and the other one was Cooper Bros. I have tried to get in with somebody. In other words, I did not feel like erecting storage tanks, because I didn't know how the business will go. So I went over to Cooper Brothers, also to Baker Brothers, and asked them whether it would not be a good idea for them to lease me a tank—a storage tank—if they could spare it. I explained to Cooper, also to Baker, that my marketing through the

Valley of Virginia has been pretty high, and the reason I come into Winchester is to have a direct line to get my oil from Parkersburg, West Virginia. Baker told me he is the Standard Oil Company, and he says: "I know you are the Standard Oil Company, and I
11264 will not—I can't lease you any tanks." Cooper Brothers again told me he can't lease me any tanks; he has built those tanks for his own use. So I tried to get a siding there for a while, and then I succeeded. But in the meantime I pulled in there to sell barrel oil. In other words, I have been getting my barrel oil from Richmond to Harrisonburg. I have been getting it direct from Parkersburg to Winchester—carload lots in barrels. That was before I erected my storage tanks.

Q. That was before you erected your storage station?—A. Storage tanks; yes, sir.

Q. As I understand you, Baker Brothers were representing the Standard Oil Company?—A. The Standard Oil Company.

Q. Do you know at what prices Cooper Brothers were selling oil there, relative to the Standard's prices at that time?—A. Cooper Brothers, when I started to do business in Winchester proper, has been a half cent below the Standard Oil Company's price, that is bulk. The Standard Oil Company had tank wagons, and Cooper used to deliver in 10-gallon cans, what they called milk cans.

Q. Ten-gallon cans?—A. Yes, sir; to stores.

Q. At half a cent less?—A. At half a cent less than the Standard Oil Company's price.

Q. And at what prices did you start in?—A. I started in to sell oil at the Standard Oil Company's price, but I could not do anything, could not sell any. In the first place I found Cooper Brothers had been born and raised there in that little town. He sells them groceries along with the oil, and besides that he gives them half
11265 a cent less than the Standard Oil Company's price.

Q. Cooper Brothers were grocers, were they?—A. They had a general merchandise line.

Q. A sort of a general country store, was it?—A. Yes, sir; wholesale, selling to merchants. And I reported this to Mr. Powell, that I am unable to do any business in Winchester or vicinity, and he authorized me—at first he investigated from his other man which he sent over from Baltimore to find out the true condition, if my statement is correct, and after that he authorized me to meet Cooper's price.

Q. Which was a half cent under—a half cent less?—A. Which was a half cent less than the Standard Oil Company's price.

Q. From that time on, at what prices did you sell?—A. I have sold at Cooper's figures.

Q. And did you at any time sell below Cooper?—A. Not to my recollection.

Q. How long did you continue to do business there in Winchester?—A. About a year or a little more.

Q. I don't know that I asked you whether you did business there personally or appointed an agent?—A. I have an agent there, a young man who done the business for me.

Q. Did you go around in the first place and canvass the trade?—A. Yes, sir; I used to canvass a great deal myself.

Q. Were these facts that you stated about the Red "C" oil true in Winchester also?—A. No, sir.

Q. That was not the case there?—A. No, sir.

11266 Q. While you were at Harrisonburg and that vicinity, I think you said that there you met with this belief that the Red "C" oil was a colored natural product?—A. Believed?

Q. Yes; you found that the trade had been told that that was the case?—A. Yes, sir; that was Harrisonburg, Mount Jackson, Edinburgh, and all through the valley of Virginia.

Q. What did you do in the way of correcting that belief?—A. Mr. Snell has told his customers, the grocery merchants whom he used to sell, that this red oil product has been proved in other points as nothing but a colored product, and if they would do the same things as other merchants did, they can save money by it.

Q. Did they do so?—A. Yes, sir.

Q. And were they satisfied? I mean, were they convinced?—A. Yes, sir; Mr. Snell used to do a right good business there. I suppose they were.

Q. Did you sell them coloring matter?—A. Yes, sir.

Q. As well as white oil?—A. Yes, sir; we sold them for a while, but after a while we used to color the oil ourselves. After the people were convinced that the oil is nothing but a colored product, we thought we could color it just as well as they could.

Q. What is the object of having red oil at all?—A. Well, you will find a good many farmers in the country, they take it as a fancy; a parlor lamp with red oil and a white wick in it looks like a novelty, looks like wine in the lamp.

Q. In other words, that was——A. That was a habit.

11267 Q. Supposed to be beautiful?—A. Beautiful.

Q. It was not supposed to burn any better?—A. No, sir.

Q. But looked nicer?—A. Looked nicer.

Q. This Mr. Snell, was he a local man?—A. He was a wholesale grocery man at Harrisonburg, Virginia.

Q. Was he a native of the place?—A. Yes, sir.

Q. A Southerner, of course?—A. Yes, sir.

Q. And was well acquainted, was he?—A. Very well. He had about a dozen salesmen through the valley of Virginia.

Q. Salesmen, you mean, for his——A. Salesmen for his grocery line.

Q. And did those same salesmen solicit business for the oil business?—A. For the oil business.

Q. And in that way you had the advantage of his acquaintance with the country?—A. Yes, sir.

Q. And that was a great advantage over what anyone would have had who went in there from the outside, was it not?—A. Yes, sir; that was the main thing.

Q. Now, who was it that represented you in Winchester?—A. Well, I have a young man there by the name of Cropman, also a tank-wagon driver.

Q. Was he a native of the place?—A. Yes, sir.

Q. Was he acquainted with people of the town?—A. Yes, sir. He was born there, in town.

Q. Did you succeed in getting some trade there in Winchester?—A. Very little.

Q. Did he?—A. We could not do much business in Winchester.

Q. You did not get very much business?—A. No.

11268 Q. How long did you stay in Winchester?—A. Oh, about a year—a little over a year.

Q. What was the reason you gave it up?—A. Because I could not exist. I could not compete with the Standard Oil Company; of course their own brands they had to have the business there, but I mean by that that the traveling and shipping oil was too expensive. My marketing was too high. In other words I could not compete with Cooper Brothers, to sell oil against a grocery man who had a right. In other words, they used to sell a barrel of oil and a bag of coffee under the same freight bill, or a chest of tea for the same rate to the merchant. I had nothing but oil to sell and I could not ship any other merchandise with it. So of course he was underselling me right and left and I could not exist.

Q. Now, when you finished up at Winchester, what was the next place where you were employed to do business?—A. I went to Baltimore, and I explained to Mr. Powell that my family, my wife objected for me to travel.

Q. This was when, Mr. Blaustein?—A. That was in the latter part of 1900. It was about June or July of 1900.

Q. Very well.—A. And if the company can't give me something to do in town I will have to look for either something else to do or go with some other oil house, because my family objected to it. I had been away all the time. Mr. Powell told me that he will advise me, he will let me know what he can do for me. In the meantime I went out to see some of my old friends whom I used to sell before I started to travel for the Standard Oil Company, and I have learned

11269 that about 90 per cent of the business which I used to have went away from the Standard Oil Company. They did not hold it. The Red "C" Oil Company and the Crew-Levick Oil Company, by giving the people credits, extending them credits and other favors, they left the company and went to those people. I have reported this to Mr. Powell, and I explained also to him that the other people are crediting, which is the main point why the Standard Oil Company have lost their business.

Q. I don't understand. You mean to say that these other concerns, competitors, had been selling to this class of trade on credit?—A. Yes, sir.

Q. Instead of for cash?—A. Yes, sir.

Q. And that that was the main reason which they assigned to you why they had left the Standard and gone to other concerns?—A. Yes, sir.

Q. Competitors?—A. Yes, sir.

Q. Now, what did Mr. Powell say to you?—A. Mr. Powell told me that the Standard Oil Company is not in a position to do any credit business to a certain class of trade and not give any credit to the rest of their customers. So I suggested to him to let me start in a company of my own, that I would be willing to credit those people.

Q. You mean you would be willing to sell them on credit?—A. To sell them on credit, so that it would not hurt the Standard Oil Company's business. Baltimore is a large field, and if the Standard Oil Company would start credit there, there would not be any end to it.

Q. You mean if they were to start to sell on credit?—
11270 A. To sell on credit, yes; but I, confining myself to that class of trade only, it would not hurt me and it would not hurt the company.

Q. Now this class of trade you are talking about is the same as you told us about when you first began to testify, consisting largely of foreigners, that is, people of foreign birth?—A. Yes, sir.

Q. Many of them speaking various foreign languages?—A. Yes, sir.

Q. And largely Jewish, as I understand?—A. Yes, sir.

Q. They were a class of people over whom you had a peculiar hold?—A. Yes, sir.

Q. By virtue of your command of languages, by virtue of your community of religion, and of your close personal acquaintance with them?—A. Yes, sir.

Q. Very well, go on.—A. I suggested to Mr. Powell to let me start in a company of my own on a small scale, to gain the trade back again which the Crew-Levick and the Red "C" have taken away from the Standard Oil Company, which I did.

Q. What did he tell you to do, or what authority did he give you?—A. He told me, "We need a plant in south Baltimore. We need a station there." He said, "You go out and look around for a location and see what you can get it for, and we will see what we will do about erecting a station at south Baltimore, which we need any way." I went out for a week or two, and I have located a place, and I have submitted it to Mr. Powell, and he told me to go ahead and rent it,

and he sent the Standard Oil Company's construction man
11271 over there, and they put me up a couple of tanks, a warehouse and an office—the Standard Oil Company's man—and I started in business there under the Eagle Oil Company. That was the latter part of 1900, or the beginning of 1901.

Q. What did you do for the purpose of getting business?—A. I went out to the same class of trade I used to have when I worked on a commission for the Standard Oil Company, and I tried to get the business. I extended them the same credit they had been getting from the Crew-Levick, and they rather help me along, give me business than they would anybody else.

Q. Well, did they give you their business?—A. Yes.

Q. To how large an extent?—A. Well, my business did not amount to a great deal when I started it, but the Red "C" Oil Company and the Crew-Levick have advertised me so heavy in town—they used to go around to their customers and tell them, "Did you hear about the Eagle Oil Company?" They said "No." They said, "You just wait a while. They will come here and sell you oil or try to sell you. They are nothing but the Standard Oil Company, and very likely," he said, "they are going to sell you cheaper, too," and they advertised me so heavily that people used to call me up over the telephone. We was compelled to put on more wagons to haul the business, to hold the trade in line.

Mr. KELLOGG. Was that the name you used, the Eagle Oil Company?

WITNESS. The Eagle Oil Company; yes, sir.

Q. Did you go around and see all your old friends?—A. Yes, sir.

11272 Q. As far as possible you canvassed this large trade that you formerly had, did you?—A. Yes, sir.

Q. And after a year or two did you get a good deal of it back?—A. Well, I got all my old friends back, yes, sir; practically all.

Q. You continued there for a considerable time, didn't you, in that part of the city?—A. In Baltimore; yes, sir.

Q. Are you still employed there?—A. I am at the same place, but for the Standard Oil Company.

Q. Have you the same part of the city?—A. Yes, sir.

Q. And you have the same——A. The same class of trade.

Q. Are they in many instances the very same individuals that you have had all along these years?—A. Yes, sir.

Q. And you hold them by the same personal elements that you have described before, do you?—A. Yes, sir.

Mr. KELLOGG. You don't use the name "Eagle Oil Company" now?

WITNESS. Beg your pardon.

Mr. KELLOGG. You don't use the name "Eagle Oil Company" now?

WITNESS. Oh, we done away with that several years ago.

Mr. CRAWFORD. I would be very glad, if your honor please, to adjourn at this point. I am going to take up a new subject with this witness, which will take considerable time, and I could not more than ask the preliminary questions, and I am very tired. I ask that you adjourn instead of waiting until half past four.

11273 The EXAMINER. Very well.

Mr. KELLOGG. Well, can't I ask two or three questions?

Mr. CRAWFORD. I would rather not, Mr. Kellogg, until I get through.

Mr. KELLOGG. I would like to ask him a few questions if you are not going to.

Mr. CRAWFORD. I object.

Mr. KELLOGG. You do? Well, I will ask him anyhow.

Mr. CRAWFORD. I instruct the witness not to answer them.

Mr. KELLOGG. All right.

Mr. CRAWFORD. I understand the examiner consents to adjourn. If not, I will go on.

Mr. KELLOGG. I ask to be allowed to ask this witness a few questions to-night. It won't take more than five or ten minutes.

The EXAMINER. Well, I have not any power to deny it.

Mr. KELLOGG. If the witness refuses to answer, all right.

Mr. CRAWFORD. If the examiner does not feel at liberty to make the adjournment, I will go on with my examination.

The EXAMINER. You had better go on then until half past four.

Mr. KELLOGG. I thought he would not want to answer them to-night.

Mr. MILLER. We object to having the cross-examination injected into the direct examination.

Mr. CRAWFORD. We do not propose to have our direct examination all broken up to please you.

Mr. KELLOGG. All right, fire away.

11274 Q. Mr. William H. Fehsenfeld testified in this case, and among other things, he stated that you put a bogus wagon on the route of John Ruehl; that it was operated by a man by the name of G. W. Ruehl, and that this man G. W. Ruehl sold gasoline in 5-gallon lots at 7 cents a gallon, when the wholesale tank wagon delivery price was 10½ cents a gallon; that you came, as I understand, to John Ruehl (I have not the exact testimony here) and offered to buy him out. Now, what is there about that?—A. G. W. Ruehl used to be a peddler in the city of Baltimore. He used to draw his supplies from different companies. He used to buy from the Standard. I have seen him once myself buying from the Red "C" Oil Company on the street. Occasionally he used to buy from me while I had charge of the Eagle Oil Company. I believe I sold him twice since I have charge of the Eagle Oil Company. I have sold him at the tank wagon market price. He paid me for it—not me, but the driver, when he got the goods. He never represented me or my company, and that is all I know about Mr. G. W. Ruehl.

Q. Do you know at what price he sold his oil or gasoline?—A. I do not. He did not come in contact with my trade. I was selling wholesale and he was selling retail. I don't know what he got for his goods.

Q. Did you put him on John Ruehl's route?—A. Never saw him except that he bought the goods from me and paid for—I only saw him once or twice in my life.

Q. Did you have anything to do with his going into business at all?—A. No, sir; nothing to do with that.

11275 Q. Did you ever go to John Ruehl with a proposition to buy him out?—A. No, sir. John Ruehl was also a peddler in Baltimore. I canvassed his trade, like I did the rest of the customers. I believe I sold him once or twice, and he paid me for it, the market price, and if I am not mistaken he himself asked me one day for a customer. He says he is getting old, and if I can get him a young man or somebody to buy him out he would quit the peddling business; he is getting too old to stay in the oil business; and I told him if possible, if I run across somebody that is willing to buy it, I will send him there. That is all I know about Ruehl's transactions.

Q. But you did not find any buyer?—A. No, sir; I did not; never looked for any.

The EXAMINER. Well, we will stop here.

Q. Is John Ruehl still in business in Baltimore?—A. Yes, sir; still in business.

Q. He did not sell out to anybody?—A. I don't think so, as far as I know.

The EXAMINER. I have decided that I will adjourn this hearing to-night until next Wednesday morning, in view of the fact that Tuesday in a national holiday, a voting day, and most of the parties in attendance are away from home. It means the loss of only one day, and I think it is proper that the hearing be adjourned until then.

Mr. KELLOGG. All right.

(An adjournment was then taken until Wednesday, November 4, 1908, at 10.30 o'clock a. m.)

11276 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, November 4, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Charles B. Morrison. On behalf of the defendants, Mr. F. L. Crawford, Mr. Douglas Campbell.

LOUIS BLAUSTEIN, recalled, and his direct examination resumed as follows:

By Mr. CRAWFORD:

Q. Mr. Farquharson, who was called by the Government as a witness in this case, testified in part that they, meaning the Standard Oil Company, sent you to Norfolk to head off Mr. Fivel by seeking the trade that Fivel was getting. Is it a fact that you were sent to Norfolk for that purpose?—A. No, sir.

Q. Or for any such purpose?—A. No, sir.

Q. Was the question of your getting Fivel's trade involved in any instructions that you received in going to Norfolk?—A. I did not, sir.

Q. You mean that it was not involved?—A. It was not involved.

Q Now, he testified further that Fivel held against Mr. Blaustein, and that Mr. Blaustein was not able to get the trade from him to any extent. Is it a fact that you and Mr. Fivel came into competition there in Norfolk?—A. We did not.

11277 Q. You have testified to buying Mr. Fivel's business after he had come to you and offered to sell, and you had agreed with him on terms, and that then as one of the terms of the sale Mr. Fivel went around to the trade with you. Did you, before you started around to the trade with Mr. Fivel, as I have just cited from your testimony, canvass the trade there in Norfolk for the purpose of selling any oil?—A. I did not.

Q. Had you sold any oil in Norfolk——A. No, sir.

Q. Wait a moment—before you started around with Mr. Fivel?—A. I did not.

Q. Had you made any effort to get trade away from Mr. Fivel?—A. I did not offer any oil, I did not try to sell to anybody.

Q. Did you operate in Norfolk against Fivel under the name of Eureka Oil Company?—A. I did not.

Q. Or under any other name?—A. I did not.

Q. I am not sure whether I asked you fully about this Ruehl matter. Mr. Fehsenfeld testified that John Ruehl told him that you had come to Ruehl with a proposition to buy him out. Is that true?—A. I did not.

Q. Did you ever go to Ruehl with an offer to buy him out?—A. I did go to Ruehl to try to sell him some oil. I sold him once or twice and he himself asked me to look out for a buyer; that he is getting old and he would sell out his business, and I told him if I will come across anyone who is looking for a business like that, I will send him over there; but I have never tried it, and I have never asked him to sell out.

Q. Did you do anything further about it than that?—A. I did not.

11278 Q. And did you at that time make any offer to buy him out?—A. I did not.

Q. Did you go to him with any idea of getting an offer from him to buy him out?—A. No, sir.

Q. Had you anything to do with sales by G. W. Ruehl there in Baltimore, or with any prices that he may have fixed?—A. I had not. As I stated before, G. W. Ruehl was a peddler, and he did not come in contact with my trade, as I was in the wholesale business. I sold him once or twice, and he paid me the market price for it, and I did not know what he is getting for his goods, except as any other peddler.

Q. Except what?—A. Except as any other peddler.

Q. Was G. W. Ruehl connected with you in business in any way?—A. No, sir.

Q. Had you any responsibility for him?—A. Never. I sold him once or twice in my life; he used to buy from all companies in town.

Q. I think you stated that John Ruehl is still in business there?—A. The last I heard he was in business, yes, sir.

Q. Has he always been in business since the time referred to?—A. Always.

Q. Never went out, so far as you know?—A. No, sir.

Q. Now, Mr. Fehsenfeld testified in reference to one W. G. Davidson, and he testified among other things that the Standard Oil Company secured practically all of Crew-Levick Company's drivers and gave them employment on their tank wagons. Is that so?—A. I can't answer for that. I don't know.

11279 Q. You were not——A. I was not then operating under the Standard. I was the Eagle Oil Company. Of course it was the Standard, but I did not come in contact with their drivers, and I can't answer for that.

Q. What do you know about Mr. Davidson in this connection?—A. Mr. Davidson came to me the latter part of April or the first of May, stating that he is about to quit the Crew-Levick Oil Company, for whom he has been manager, or he has quit, I don't remember which. He told me that if I would help him along and be willing to lease him a wagon and sell him the oil, he thinks he can make a living. I conceded this proposition to help Mr. Davidson along. I had a spare wagon in the yard, and I made a contract with Mr. Davidson, that he is entitled to so much off every gallon of oil and gasoline. I believe I give him a cent a gallon. I considered this also a good proposition for me, being at that time I could not market oil for a cent a gallon. He was willing to drive the wagon himself, with his own horses, and I have made a contract, which I have filed with the——

Q. Well, all right; that contract was in writing, was it?—A. Yes, sir.

Q. Do not state what was in it. Of course we will produce the contract.

(Paper marked "Defendants' Exhibit 209.")

Q. I show you defendants' Exhibit 209. Will you state what this paper is?—A. This is the contract I made with Mr. Davidson.

Q. Will you look at the signature at the bottom and state 11280 whether that is the genuine signature of Mr. W. G. Davidson?—A. Yes, sir, it is.

Q. And is this the original contract which you received from him at the time?—A. It is.

Mr. CRAWFORD. I offer defendants' Exhibit 209 in evidence.

Q. This contract is dated May 7, 1904. According to its terms you agreed to furnish, as the lessor, to Mr. Davidson, a tank wagon of the capacity of 700 gallons, at a rental of $15 a month, for a term of six months; you agreed to furnish him kerosene oil upon certain terms that are named in the contract. Now, I ask you how long this contract remained in force between you and Mr. Davidson.—A. For about two months.

Q. And during that time were the terms of the contract performed by both parties?—A. Yes, sir.

Q. You specified here that you were to furnish kerosene to meet the requirements of the city ordinances as formulated by the members of the city council of the city of Baltimore, covering the sale of said product in said city. Why was that provision inserted?—A. About three months previous to this the Crew-Levick Oil Company have been arrested in Baltimore for selling oil which did not come up to the city test, and they fined them. Davidson was afraid, being he run this under his own business, if I don't give him an oil which comes up to the city requirements, he will have the same trouble. Therefore he made me specify in the contract, in case anything should happen, that he is not responsible for it.

Q. Now, the contract specifies that you were to sell him kerosene, and also gasoline, at I cent per gallon less than the
11281 regular open-market price. Now, what class of trade was Mr. Davidson proposing to sell to, or what class did he sell to?—A. Why, I don't know.

Q. He sold to dealers?—A. To dealers, yes, sir.

Q. That is, he was a wholesaler?—A. A wholesaler, yes, sir.

Q. Now, why did you sell him at 1 cent less than the market price?—A. Because it cost me at that time more than a cent to market my oil, and Mr. Davidson could have marketed it for less money, being as he drove his own wagon.

Q. It was necessary, I suppose, that he should have some margin for profit, was it not?—A. He got a cent a gallon.

Q. That is to say, that cent covered his profit?—A. Covered his profit, yes.

Q. He was in effect a jobber?—A. Yes, sir.

Q. You say that it had cost you previously a cent and a half a gallon to market?—A. Well, from a cent and a quarter to a cent and a half.

Q. Therefore you were willing to sell to him in large quantities at 1 cent reduction——A. Yes, sir.

Q. — because you really made a saving on the cost of marketing?—A. Yes, sir.

Q. Is that correct?—A. That is correct.

Q. Now, what was the occasion of that contract coming to an end?—A. Mr. Davidson could not sell as much oil as he expected to; he thought he will sell from 5 to 600 gallons a day, but he find out he could not, and he asked me for more margin.

Q. For more what?—A. For more margin, more money.

Q. You mean a larger——A. A larger commission, which I could not afford to give him any more, and he quit.

11282 Q. That is, he broke off the contract?—A. Yes, sir.

Q. In Mr. Fehsenfeld's testimony, at page 2325 of the printed record, he being called by the Government as a witness, he said that the Davidson Oil Company offered oil at 5 to 5½ cents a gallon. Do you know about that?—A. I do not. I don't see how he

could have done that, as his margin was only a cent, and at that time oil was, I believe, about 9 cents a gallon—from 8 to 9. I don't see how he could have offered for such a figure.

Mr. MORRISON. That is objected to. He has already answered that he does not know anything about it, and he is not asked to argue it.

Q. Did you make any arrangement with him to sell oil at 5 or 5½ cents a gallon?—A. No, sir.

Q. Did you make any arrangement with him to sell oil at any price?—A. I did not.

Q. But you did sell him all the oil he got from you at 1 cent off the regular market price?—A. Yes, sir.

Q. Did you control his sales in any way?—A. No, not a bit.

Q. Or the prices that he fixed?—A. No, sir.

Q. Mr. Fehsenfeld also on the same page, 2325 of the printed record, testified as follows: "The practice was that if the Eagle Oil Company could not secure our customers, then the Davidson Oil Company would go to them and offer them oil at 5 or 5½ cents." Is that true?—A. Not that I know of.

Q. Was there any such practice?—A. There was not that I know of.

Q. Was there any practice whereby if the Eagle Oil Com-
11283 pany was not able to secure a customer sold by the Red "C"
Oil Company, then the Davidson Oil Company was to go to that customer?—A. No, sir; not that I know of.

Q. Was there any community of action between you and Davidson?—A. There was not. Davidson was at liberty to go to anybody's customer except mine, which I specified in the contract. It did not pay me to give him a cent, and keep my wagons——

Mr. MORRISON. Now you are not asked that. Just answer the question.

Q. Mr. Fehsenfeld, on the same page, 2325 of the printed record, testified with reference to this time when Davidson was doing business there, that "the Eagle Oil Company were selling at 6 or 6½, going only to our customers in Baltimore city, or to the customers of the Crew-Levick Company, offering this oil at considerably less than the price." Is that true?—A. It is not.

Q. Do you know or did you know one J. W. Crook?—A. I did—I do.

Q. What can you state in regard to this man, this Mr. Crook, in connection with the testimony of Mr. Fehsenfeld that I just read you?—A. Yes, sir. It was about January, 1904. J. W. Crook, who had a large amount of stores in Baltimore, about 18—I have been selling him for years—called me up on a certain day and told me to come over to see him. I went over there. I find Mr. Davidson and a gentleman by the name of Mr. McDonald, who represents the Crew-Levick Oil Company of Philadelphia.

Q. Just a moment. Mr. Crook was in the grocery business, was he?—A. Yes, sir; the grocery business.

11284 Q. I understand you to say that he had 18 or so grocery stores?—A. Yes, sir.

Q. All in the city of Baltimore?—A. Scattered all over town.

Q. Very well. Now go on and state what——A. Mr. Cook called me in his private office——

Mr. MORRISON. Wait a moment. That is objected to because it is clearly hearsay testimony.

Q. Go on.—A. Mr. Crook called me in his private office and showed me a contract which he is about to make with the Crew-Levick Oil Company. He asked me if I will meet those prices he is not going to leave me, but if I don't he is compelled to sign it.

Q. What was the provision of the contract in regard to the prices, as you recollect it?

Mr. MORRISON. That is objected to as hearsay. The contract itself is the best evidence.

Q. Answer the question.—A. The contract stated they give him a rebate off the tank wagon market price for one year; ¾ of a cent off on oil in the winter time, ½ cent off on gasoline in the winter time and ¾ on gasoline in the summer time and ½ cent on oil in the summer time. I told Mr. Crook that I can not meet those figures, and I was awfully sorry to lose him. Mr. Crook signed the contract, and by getting those inducements he reduced the retail price of oil all over his stores ½ cent below the Standard Oil Company's tank wagon price to the merchants.

Q. Just a moment. Did you subsequently see that original contract?—A. I did.

11285 Q. Signed by whom?—A. Signed by Davidson as manager for the Crew-Levick Oil Company and J. W. Crook.

Q. Have you that original contract in you orpessnios

Q. Have you that original contract in your possession?—A. I did have it.

Q. But you haven't it now?—A. No, sir.

(Paper marked "defendants' Exhibit 210.")

Q. I hand you defendants' Exhibit 210. Is this a photograph of the original contract between Davidson and Crook, to which you have just testified?—A. Yes, sir.

Mr. CRAWFORD. I offer defendants' Exhibit 210 in evidence.

Mr. MORRISON. Let me ask him some questions about that.

WITNESS. This is not the original. This is a photograph.

By Mr. MORRISON:

Q. How do you know this is a photograph?—A. I have taken that from the original. I was right there.

Q. Were you the photographer?—A. No, sir; but I was right there with the photographer when this was done.

Q. Where did the photographer get the original contract?—A. I gave it to him.

Q. Where did you get it?—A. Mr. Davidson gave it to me.

Q. When was that?—A. Right after he came in my employ.

Q. How is that?—A. After he came to my place and sell the oil, after I leased him that wagon.

Q. Was this made after you had your contract with Mr. Davidson?—A. How is that, Mr. Morrison?

Q. Was this made after the contract, Exhibit 209?—A. This was made with whom—with Crook?

Q. Was this contract made after 209?

11286 Mr. CRAWFORD. He does not know what 209 is. Show him the——

WITNESS. No; this contract was made in January, 1904, and Davidson's contract was made in May of 1904.

Q. You got this contract, then, of Mr. Davidson?—A. Yes, sir; although I have seen it before it was signed by Mr. Crook?

Q. And you took it to a photographer?—A. Yes, sir.

Q. What did you do that for?—A. I wanted to give a copy to each of my men, to go to the Crew-Levick Oil Company's trade and show him what the Crew-Levick Oil Company is doing to Crook.

Q. Who was the photographer that took that?—A. I will tell you his name in a minute. He keeps his place of business on North Charles street.

Q. Well, can you give his name?—A. I can't give it to you now, but it will come to me before I get through.

Q. Where is the original contract?—A. Mr. Davidson has got it, I suppose. I returned it to him.

Q. Where is Davidson?—A. I don't know, sir.

Q. Baltimore?—A. I could not tell you.

Mr. MORRISON. Defendants' Exhibit 210 is objected to because it is not the best evidence and because it is incompetent and immaterial. It is not shown by the witness to be a true photographic copy, and can not be, because he is not the photographer who took it.

By Mr. CRAWFORD:

Q. Did you compare this with the original after it had been made?—A. Yes, sir.

11287 Q. Do you know that this is an exact copy of the original?—A. Exact copy.

Q. Were you present when it was being photographed?—A. I was right there waiting for it.

Q. Did you see the original before the camera?—A. I did, sir.

Mr. CRAWFORD. I guess the court will presume that the sun tells no lies.

Mr. MORRISON. Well, it won't presume that about Blaustein.

Q. Now, this contract, defendants' Exhibit 210, provides that for the year 1904 the Crew-Levick Company agree to furnish to all the stores of James W. Crook oil and gasoline at the following prices: Oil from January 1, 1904, until May 1, 1904, at a reduction of ¾ of a cent a gallon below the regular tank-wagon market price; stove gasoline up to May 1, 1904 (if I read this correctly), at a reduction or rebate of ½ cent below the regular tank-wagon market price; oil

from May 1, 1904, to October 1, 1904, at a reduction or rebate of ½ cent a gallon, and from October 1, 1904, to January 1, 1905, at a reduction of ¾ of a cent a gallon; stove gasoline from May 1, 1904, to October 1, 1904, at a reduction or rebate of ¾ of a cent, and for the balance of the year for a reduction of ½ cent, does it not? Just glance at the——

Mr. MORRISON. The contract itself shows.

Mr. CRAWFORD. Well, I know——

WITNESS. Yes, sir.

Mr. CRAWFORD. But I want to have those figures in the record in connection with his testimony.

WITNESS. Yes, sir; this is correct.

11288 Q. What did you do in consequence of the making of that contract after you became aware of it?—A. I have distributed them to my men and told them to go to the Crew-Levick Oil Company's trade and show them a copy of this contract and tell them what Crew-Levick & Company are doing to Crook; that they are giving him rebates of ¾ of a cent, and a half.

Q. What did you do in regard to your prices?—A. At that time when Crook made this contract, Crook has put out signs all over his stores; also sent circulars through the town——

Mr. MORRISON. I object to that as not an answer to the question. The question is, What did you do about prices?

Q. Go on and make your explanation. Did you see these signs?—A. Circulars and signs myself.

Q. All right; go on.—A. And he sold oil and gasoline ½ cent below the Standard Oil Company's price to his customers. Naturally, he got all the business.

Mr. MORRISON. That is objected to. He has not been asked what he naturally got, or what he could have gotten at all. He was simply asked what they did about prices.

Q. Go on with your story.—A. I was compelled either to take my wagons off the street——

Mr. MORRISON. That is objected to, because it is not an answer to the question. He is not asked anything about his wagons. He is asked about oil.

Q. I will ask the question over again. What did you do, in addition to what you have already testified, in consequence of the making of this contract with Mr. Crook, in regard to prices and other-

11289 wise in regard to your business, and state the reasons why you did what you did.

Mr. MORRISON. That is objected to on the ground that the reasons that actuated him in his course of conduct are perfectly immaterial.

Mr. CRAWFORD. I do not think so. I think there is nothing more material in the case. I beg to take issue with you on that.

Q. Go on, Mr. Blaustein.—A. At first I went to see some of the Crew-Levick Oil Company's trade, as soon as I have learned of this contract, and explained to them that I have seen the contract, and this is the only reason why Crook is selling oil less than the other

merchants can buy. The Crew-Levick Oil Company were hurt. They lost some of their other trade, and they were compelled to make an open cut to all of their trade, ½ cent a gallon. The ticket used to call for the tank-wagon market price, but they collected half a cent less.

Q. Did you see any such tickets?—A. Yes, sir.

Q. How do you know that they collected less?—A. Why, I was there many times in the stores myself, and have seen them doing so, the driver collecting less than the ticket called for.

Q. Now, what did you do?—A. I was compelled to reduce half a cent to my trade, to stay in business.

Q. Do you recall what the market price was at the time of the Crook agreement, in January, 1904?—A. I believe it was 9 cents. I can't say positively. I don't remember.

11290 Q. What have you to say as to whether the Eagle Oil Company sold oil at this time, as Mr. Fehsenfeld testified at page 2325 of the printed record, at 6 or 6½ cents? Did the Eagle Oil Company at that time sell oil there for 6 cents a gallon?—A. Never sold for 6 cents, but I believe they sold for 6½ cents.

Q. How did you come down to 6½ cents a gallon?—A. Because the Standard Oil Company have reduced their market to 7 cents a gallon.

Q. What do you mean by reducing their market?—A. The tank-wagon price.

Q. Was that reduction confined to your part of Baltimore, or was it generally through Baltimore?—A. Why, I can't tell that.

Q. You don't know that?—A. No, sir.

Q. All you know is that their tank-wagon price came down to 7 cents?—A. Came down to 7 cents. Naturally Crook had his contract with the Crew-Levick. He had a sign out, 6½ cents. The Crew-Levick were selling to all their other customers at 6½ cents, and I was compelled to sell for 6½ cents.

Q. And you did do so—sold at 6½ cents?—A. 6½ cents.

Q. After Crew-Levick & Company had come down to 6½ cents?—A. Yes, sir.

Q. But you never did sell for 6 cents a gallon?—A. No, sir.

Q. This time when the Standard price came down to 7 cents and the Crew-Levick Company came to 6½, and then you came to 6½, do you remember what time in the year that was in 1904?—A. It

11291 was in the fall of the year. I believe it was in September—some time during September or October. I don't remember the exact month. It was either September or October.

Q. When did Davidson stop buying from you, in relation to this decline? Was it before or after that decline to 7 cents?—A. Davidson quit before.

Q. So that the price was at least 8 cents, was it, when he quit?—A. I believe it was.

Q. That is your best recollection?—A. Yes, sir.

Q. How long did J. W. Crook continue to sell oil at those cut prices?—A. It was right after the Standard Oil Company reduced their market to 7 cents—about three or four weeks—that the Crew-Levick Company notified J. W. Crook that he can't sell oil at retail at 6½ cents.

Mr. MORRISON. How do you know that?

WITNESS. Davidson told me.

Mr. MORRISON. I move to strike it out as hearsay testimony.

WITNESS. And Crook told me, too.

Q. What was the fact, at any rate, about Crook's prices after that?—A. 7 cents. He sold at what other people have paid for.

Q. You mean he raised to 7 cents, which was then the market price from tank wagon?—A. The Standard Oil Company's market price, 7 cents; yes, sir; but of course he got a reduction on 7 cents.

Q. But he sold to consumers, did he?—A. Yes, sir.

Q. At the same price that the Standard Oil Company was selling to dealers for?—A. Yes, sir.

Q. That is what you mean to say?—A. Yes, sir.

11292 Q. Now, when Crook put his price up to 7 cents, what did you do with the Eagle Oil Company's price?—A. I also advanced to 7 cents.

Q. The Eagle Oil Company sold to dealers, did it not?—A. Yes, sir; dealers only.

Q. Mr. Mahle, one of the witnesses called by the Government, at page 2361 of the printed record, testified that the Eureka Oil Company procured business by taking orders for deferred shipments. Now, to what extent if at all was that true, and what did you do in that respect?—A. I suppose he means by taking orders in advance. We used to take orders to sell a man ten or fifteen or five barrels of oil, and take his money and ship him a week or two later. That was done by everybody.

Q. When was that oil paid for?—A. Right away.

Q. You mean that it was paid for when the order was put in?—A. He used to send us a check when we sent him the bill; gave him the gauge of each barrel, and he paid for it.

Q. Then the payment was not deferred?—A. No, sir.

Q. It was only the delivery that was deferred?—A. That was all.

Q. And that was for the convenience of the customer?—A. For the convenience of the customer; yes, sir.

Q. He also said that the Eureka Oil Company "allowed one gallon on each barrel, outage." What is there about that?—A. That was customary amongst all oil jobbers, to allow one gallon to each barrel, being the barrel can not be filled to its shell capacity, and therefore the merchant did not get any more than he paid for.

11293 Q. You have used the words "shell capacity." What does that mean?—A. Up to the bung.

Q. You mean that was all that could possibly be put into the barrel?—A. Yes, sir.

Q. So that if any more was put in it would overflow?—A. Yes, sir.

Q. Why could not the barrel be filled to that extent?—A. On account of oil is expanding, and if they will fill the barrel up to its shell capacity the hoops will burst or the head would burst.

Q. Is it expansion from heat that you refer to?—A. Yes, sir; heat from the weather.

Q. Changes of temperature?—A. Yes, sir.

Q. And is it necessary to allow a small empty space in the barrel——A. It is.

Q.——in order to allow for that expansion?—A. Yes, sir.

Q. So that what you mean to testify to is that it was customary at that time for merchants to leave the barrel slightly unfilled, filled below what you call its utmost capacity——A. Yes. sir.

Q.——shell capacity?—A. Yes, sir.

Q. And then to estimate that at a gallon?—A. Yes, sir.

Q. And to charge the customer one gallon less than the marked capacity of the barrel?—A. Yes, sir; that was done by all oil jobbers.

Q. And that is the only sense in which you allowed an outage of a gallon a barrel?—A. That is the only one.

11294 Q. Do you happen to know whether the Standard Oil Company at that time made an allowance in that way or in some other way?—A. The Standard Oil Company, if I recollect it, used to weigh the empty barrel, and fill the barrel, and after it was full, weigh it over again, and come to the gauge by weight. Then they did not fill the barrel to its shell capacity, as their patent filler used to check when it was about one gallon out of the barrel.

Q. Then their method of covering this error or this shortage was by weight?—A. Yes, sir.

Q. And your method was by allowing a lump amount, one gallon?—A. Yes, sir; I had to do this on account of all the oil jobbers used to do the same. They did not get anything more than they paid for.

Q. Where that method of allowance of one gallon for outage was practiced, what was stenciled on the barrel as the contents?—A. The capacity of the barrel.

Q. The capacity was stenciled?—A. Yes, sir.

Q. Where the Standard Oil Company adopted the method by weight, what did they stencil on the barrel, the capacity or the actual contents?—A. The actual contents of the barrel.

Q. Mr. Farquharson, a witness for the Government, page 2211 of the printed record, testified that you had instructions from Mr. Powell before coming to Norfolk "not to visit the Standard Oil Company's trade, but of course if he was stopped by a grocer or any merchant, he could sell them." Did you ever have any such instructions from Mr. Powell?—A. I did not.

11295 Q. Were you ever told to avoid soliciting the Standard Oil Company's trade unless you were stopped by a grocer or a merchant?—A. I canvassed everybody's trade.

Q. Well, just read the question. I wish you would give me a direct answer to that.

The reporter read the question as follows: "Were you ever told to avoid soliciting the Standard Oil Company's trade unless you were stopped by a grocer or a merchant?"

A. No, sir. We have canvassed——

Q. No, that is not the question. It is not a question of what you did. It is a question of what you were told.—A. He never told me that. I have answered that before.

Q. Did you, in canvassing for business for the Eureka Oil Company, keep away from the customers of the Standard Oil Company in Norfolk?—A. I did not.

Q. What did you do in regard to the customers that the Standard Oil Company had at that time?—A. We used to sell to everybody as I went along on my route. In fact, I have tried to sell all I can, to decrease my marketing expense.

Q. Did you, in fact, sell to customers of the Standard Oil Company?—A. Oh, more than 50 per cent of them.

Q. For a considerable period?—A. All the time I have been there.

Q. That is to say, you got at least 50 per cent of the trade which the Standard Oil Company had theretofore had, did you?—A. Yes, sir.

11296 Q. Mr. Farquharson, page 2212 of the printed record, testified that he was not advised until after you had started at Durham that you were going in there. Is that correct?—A. It may be he was not advised when I made my first trip to Durham, but after I reported my investigation to Mr. Powell, Mr. Powell instructed Mr. Farquharson to let me have a horse from his stable and ship it to me at Durham. I went there myself and picked the horse out.

Q. From where?—A. From Norfolk.

Q. To where?—A. To Durham.

Q. You said you went to pick out a horse. Where did you go to pick out a horse?—A. Farquharson's stable; the Standard Oil Company's stable in Norfolk.

Q. With whom did you go there?—A. With Farquharson.

Q. Did you pick out a horse?—A. Yes, sir; and he shipped it to me, to the Eureka Oil Company at Durham, North Carolina.

Q. Was that before you began business in Durham?—A. Yes, sir.

Q. Before you went to Durham to do business, Mr. Farquharson knew you were going there, did he?—A. Yes, sir.

Q. I have forgotten whether I asked you in regard to the condition of the trade around Durham when you first went there. Was Mr. Griswold, the Standard's agent in Durham, selling to towns around Durham?—A. Mr. Griswold was working on a commission, and he did not sell to the trade around Durham, but only confined himself to Durham proper.

Q. When Mr. Farquharson testified, as he did on page—well, I can't find the page—that before you went to Durham the

11297 Standard Oil Company had all but eight customers there, in what sense only was that true?—A. It may have been true at Durham proper, but they had about fifty or sixty customers around East Durham and North Durham and, I believe it was, Haytown or Hayfield.

Q. And those customers Griswold did not sell?—A. No, sir.

Q. And were those towns around there readily reached from Durham by tank-wagon service?—A. Well, there were very rough roads there, from Durham to those towns.

Q. How far away from Durham were any of those places?—A. A mile or a mile and a half or two miles.

Q. Were they within distances ordinarily reached by tank wagon?—A. Yes, sir. They could have been reached by putting two more horses on the tank wagon.

Q. Were they reached by the man whom you had appointed there to represent the Eureka Oil Company? Were these towns outside of Durham reached by the representative whom you appointed for the Eureka Oil Company?—A. Yes, sir.

Q. With tank wagon?—A. No, sir; with barrels first.

Q. With barrels. What trade did you solicit in Durham and in the neighborhood? That is to say, what trade was solicited by your representative?—A. I have appointed C. C. Thomas & Company on a commission, and he was a groceryman; he canvassed everybody's trade in Durham—Standard Oil and Red "C" Oil Company's customers; he also canvassed the trade around Durham, as he was visiting almost every store in town.

Q. Did he acquire any of the trade which the Standard Oil had held before that?—A. He did; a right smart amount of it.

11298 Q. What do you mean by that—a good deal of it?—A. A good deal of it.

Q. Mr. Fehsenfeld, to whom I have referred before as a witness for the Government, stated that when the Eureka Oil Company began business at Durham its salesman had a list of the Red "C" customers and that your salesman went to Red "C" customers, entirely ignoring the customers of the Standard Oil Company. Is that true?—A. It is not.

Q. Did your salesman have any list of Red "C" customers?—A. I had no salesman at that time. I went myself with Mr. Thomas.

Q. Did you yourself have any list of the Red "C" customers?—A. I did not.

Q. You canvassed everybody?—A. Everybody in town.

Q. Mr. Thomas was the man whom you selected as your representative?—A. Yes, sir.

Q. Mr. Fehsenfeld testified that the Eureka Oil Company sold to the Red "C" trade at Durham for less than the prices prevailing at Durham. At what prices did you sell there in Durham?—A. The Standard Oil Company market price.

Mr. CRAWFORD. I desire to note that the statement of Mr. Fehsenfeld about the list of customers is at the bottom of page 2311, and his

statement with regard to the Eureka Oil Company having sold in Durham for less than the prices there prevailing is at the top of page 2312 of the printed record.

Q. Did the Eureka Oil Company ever sell in Greensboro, North Carolina?—A. No, sir; except once I sold a merchant—I met
11299 him in the car, in the train, rather—another salesman introduced me to that merchant, and I sold him three barrels of oil, and that was the only time I have sold oil in Greensboro.

Q. Mr. Fehsenfeld, page 2313 of the printed record, testified on hearsay from one of his salesmen, named McKubbin, that this salesman had located "the Eureka Oil Company and its source of supply, and found that the deliveries were made to the back yard of a negro residence by the Standard Oil Company's wagons under cover of night." Is that true?—A. It is not.

Q. Where did you get your supply of oil and gasoline while you were trading there in Norfolk as the Eureka Oil Company?—A. My tank wagon used to go to the Standard Oil Company's plant and buy all the gasoline and about fifty per cent of my bulk oil.

Q. At what time in the day or night did you go?—A. Oh, during the day; generally in the morning.

Q. By daylight?—A. Oh, yes.

Q. Where did you get the other fifty per cent of your oil?—A. From the Standard Oil Company—in barrels—from Baltimore.

Q. Was there any concealment about the way it was delivered to you?—A. Not at all. I continued my place of business from the same place where Fivel used to keep—facing Princess Anne avenue.

Q. What was there—a stable?—A. A stable and a lot on the front of the street.

Q. And you continued to keep your tank wagon there?—A. Yes, sir.

11300 Q. Was that the back yard of a negro residence?—A. No, sir; Fivel kept a grocery store right there near the lot. No negro in a block or two.

Q. Is there any foundation whatever for that story told by Mr. Fehsenfeld?—A. No, sir.

Q. Is it absolutely false?—A. It is absolutely false.

Q. Did you ever do any business as the Eureka Oil Company in Newport News, Virginia?—A. No, sir. Never sold a gallon of oil in Newport News.

Q. Then, Mr. Mahle, in testifying as to certain alleged conduct of yours in Newport News, is mistaken, is he?—A. Mistaken.

Mr. Morrison. That is objected to as incompetent and immaterial. It is not a proper question to put to a witness.

Q. Mr. Farquharson, at page 2213 of the printed record, testified that on one occasion a scene occurred in the Caroline Hotel, at Durham, North Carolina, in which you "made quite a stir in the lobby of the hotel, in denouncing Mr. Powell as following you up and calling him very harsh names." Who was Mr. Powell?—A. Mr.

Powell at that time was in charge of the refined oil of the Standard Oil Company, Baltimore.

Q. Now, was that statement which I just read to you true?—A. It is not. Mr. Powell left a letter for me with the clerk of the hotel. The clerk has called up Griswold, who was then agent of the Standard Oil Company, and told him that Mr. Powell left a letter for me. Mr. Griswold came there and started to fuss and holler that I am there for no other purpose except to reduce his commission. So I left the hotel. I did not denounce Mr. Powell for anything.

11301 Q. Did you make any reply to his statement?—A. I did not.

Q. Did you make any statement reflecting on Mr. Powell?—A. I did not.

Q. Did you make any statement whatever about Mr. Powell at that time?—A. Not at all.

Q. Mr. Mahle also testified, page 2361 of the printed record, "The Eureka operated also at Suffolk, selling B. L. Saunders and also C. J. Duke. Saunders bought during the time from the Southern Oil." What was there about that, Mr. Blaustein?—A. B. L. Saunders is a jobber at Norfolk. He used to buy his oil from different oil people. I was there during the summer months.

Q. Of what year was that?—A. Of 1897, or the beginning of 1898. And he told me that he is having considerable trouble with his leaky barrels. He took me out to his warehouse and showed me where some barrels were half empty.

Q. Do you know from whom those barrels had come?—A. Yes, sir.

Q. From whom had those barrels of oil come?—A. From the Red "C" Oil Company. He also used to deal with the American Oil Company.

Q. Well, what is the reference to the Southern Oil?—A. I don't think he ever dealt with the Southern Oil & Supply Company.

Q. If it was, it was the Southern Oil & Supply Company?—A. Yes.

Q. That was not the company which you testified about in Richmond?—A. No, sir.

11302 Q. It was a different concern?—A. A different concern.

Q. Not a Standard Oil concern?—A. No, sir.

Q. Now, go on with your statement about the leaky barrels.—A. I have explained to Mr. Saunders the reason those barrels leak, that they come from a good distance; I guaranteed to Mr. Saunders that I will ship him good packages, and I will guarantee that if any barrel will leak, to notify me, and I will have this barrel shipped to Norfolk and give him credit for the same.

Q. What do you mean by "good packages?"—A. Tight packages, barrels that would not leak.

Q. You mean barrels that would not leak?—A. Would not leak. And he told me if I will do this, he is going to give me his business. He gave me an order for one or two barrels the first time.

Q. And is that all the business that you did with him, or did it continue?—A. He continued for some time.

Q. Now, Mr. Mahle said with reference to this same Saunders transaction that the Eureka gave Saunders a better commission. Was Saunders going to sell your oil at that time on a commission?—A. No, sir, I sold him the oil direct; sent him a bill and he paid for it.

Q. At what price did you sell him?—A. At the Standard Oil Company's market price at Suffolk.

Q. What sort of a dealer was Saunders?—A. Saunders was a wholesale groceryman; he dealt in oil, also groceries.

Q. Mr. Mahle testified, page 2362, that you consulted with him in regard to business of the Eureka Oil Company and re-
11303 ceived advice from him. Is that the fact?—A. No, sir. I never received any advice from Mahle. Of course Mahle was an office boy, and he used to do some billing for me, sending bills to merchants.

Q. But you never consulted with him nor took his advice about this business?—A. No, sir. I never consulted with him, but everybody knew at that time in the business who the Eureka Oil Company was.

Q. He further testified, at page 2362, that at Durham you told him (Mahle) that the Eureka Oil Company was in Oil City, meaning, as I understand his testimony, that you were doing business there. Did you ever tell him that?—A. No, sir.

Q. Did you ever do business in Oil City?—A. No, sir. That is laughable.

Q. What is the Oil City referred to there?—A. I don't know. Mahle is liable to refer to anything.

Q. Do you know of any Oil City?—A. I have heard of Oil City, but I never was there in my life.

Q. Do you know of any other Oil City except that one in Pennsylvania?—A. That is the only one I know of.

Q. Was there any Oil City in North Carolina that you ever heard of?—A. No, sir.

Q. Did you have any conversation with Mr. Mahle at Durham at all on this subject?—A. I never met Mahle in Durham. Mahle at that time was an office boy in Mr. Powell's room.

Q. Did you tell him that the Eureka Oil Company had head-quarters in Oil City, or anything of that sort?—A. No, sir.
11304 Q. Did you in any way, in conversation with him, connect the Eureka Oil Company with any place called Oil City?—A. No, sir.

Q. Did you tell him that the Eureka Oil Company was an independent company?—A. No, sir, I did not. He knew that they were not.

Q. And you did not make that statement to him, either at Durham or anywhere else?—A. Nowhere.

Q. Fehsenfeld testified, page 2316 of the printed record, that the Southern Oil Company, in the Virginia Valley, sold oil at prices

"destructively low." What have you to say about that?—A. I sold my oil according to the Standard Oil Company's market price. What he may call low, I have reduced his fancy red oil price, but this was not lower than the Standard Oil Company's price.

Q. You are now referring to what places in the Virginia Valley?—A. Harrisonburg and Mount Jackson.

Q. As I understand you, when you went to Winchester, and found Cooper was selling below the Standard, you finally came down to Cooper's price, did you?—A. Yes, sir.

Q. Did you, either in Winchester or anywhere else in the Virginia Valley, sell at prices below those of the Standard, except in respect to Cooper, as you have stated?—A. That is all.

Q. He says that you sold at "one price which netted 3 cents per gallon for oil f. o. b. Baltimore, in barrels, including the barrel." What do you know about that?—A. I don't remember of making any such sale as that.

11305 Q. He says, "The price of the barrel and the cooperage of the barrel was equivalent to 3 cents per gallon, making the oil free." Did you ever sell any oil in the Virginia Valley upon such terms that it was equivalent to selling it free——A. No, sir.

Q. —allowing for the barrel?—A. No, sir.

Q. Ever do anything of that kind at all there?—A. No, sir.

Q. Or elsewhere?—A. No, sir.

Q. Did you ever sell oil there, or did your agent, to your knowledge, ever sell oil in the Valley of Virginia, at 3 cents a gallon?—A. Not to my knowledge, he did not.

Q. You never sold it?—A. I never sold it.

Q. Did you ever authorize the sale at 3 cents?—A. No, sir.

Q. Did you ever know of its being sold at 3 cents?—A. I did not.

Q. I mean by your agent there, or in your name.—A. No, sir.

Q. Who were your agents at Harrisonburg?—A. James Snell & Company.

Q. Did you furnish them prices at which they were to sell?—A. Yes, sir.

Q. What prices did you give them?—A. I used to give them the Standard Oil Company's prices.

Q. Did you, while the Southern Oil Company was selling in Winchester, give away cans to customers?—A. No, sir.

Q. Or anywhere else in the Valley of Virginia?—A. No, sir.

11306 Q. Or anywhere else, or any other time?—A. No, sir; not that I remember of.

Q. All the transactions which you have testified to in regard to the Valley of Virginia were those of the Southern Oil Company, were they not?—A. Yes, sir.

Q. And if I have inadvertently mentioned the Eureka Oil Company, you would make the same answers in regard to the Southern Oil Company, would you?—A. Just the same.

Mr. MORRISON. We agree to that.

Q. Mr. Cooper testified, page 2396 of the printed record, referring to you, when the Southern Oil Company was in Winchester, as follows: "It would be very hard to tell how low he" (meaning Blaustein) "did cut it. He seemed to work on the basis that if he couldn't get it at one cent he would try two; and we could never tell how low they would go. In some instances they would be as much as three cents less than they would be in others, or two cents less than they would be in others." Did the Southern Oil Company at that time in Winchester, cut Cooper's price?—A. No, sir; not that I can think of.

Q. Did it ever do so to your knowledge or with your authority?—A. Not to my knowledge and not with my authority.

Q. So that however low your price may have been, Mr. Cooper's price was as low or lower, was it?—A. About the same price.

Q. And I understood you to testify on last Friday that all the reductions you made were in consequence of cuts first made by Mr. Cooper?—A. Yes, sir.

Q. That you met his price?—A. I did.

11307 Q. On page 2396 of the record Mr. Cooper further testified: " . . . the merchants of Winchester got wise and contracted with Blaustein for as much as fifty barrels at a time, and then they took that oil and shipped it back into Chambersburg, in Pennsylvania." Did you make any contracts with any merchants at Winchester to sell them fifty barrels of oil?—A. I can not recollect that of making any.

Q. Did you make such a contract with any one?—A. No, sir. What I mean by that is, make one shipment of fifty barrels at a time. I may have sold a man twenty-five or fifty barrels of oil, but he has been taking them every week or every two weeks, and when he returned the empty barrels ship him some other barrels.

Q. Did you ship to any such persons who thereafter reshipped the oil to Chambersburg?—A. I don't know of any.

Q. I show you petitioner's Exhibit 758, being a postal card purporting to be signed "P. Blaus." Was that postal card signed by you?—A. No, sir; I don't remember it. I never sign my name "P. Blaus."

Q. Well, is that your handwriting?—A. It is not; no, sir. No, sir. I don't think it is. I don't think it is.

(A recess until 2 o'clock was announced.)

WITNESS. I want to correct that. I want to see that postal again after recess.

Mr. MORRISON. Let him see it right now.

(The postal card (petitioner's Exhibit 758) was handed to the witness.)

WITNESS. That was Mr. Edelstein, who took the photograph of Crook's contract.

11308 Mr. MORRISON. Does it need any time for you to tell your own handwriting?

Mr. CRAWFORD. Let the witness alone.

Mr. MORRISON. I want the record to show how long he is studying over it. Is it necessary for you to read the contents to know whether it is your handwriting?

WITNESS. It looks like my handwriting.

Mr. MORRISON. Yes.

WITNESS. It looks like my handwriting.

Mr. CAMPBELL. What is the date of that?

WITNESS. January first—I can't make out the date myself—"1/5–19," 1900, or whatever it was—I don't know.

Mr. CAMPBELL. Is that a "P" or an "L" in the signature?

WITNESS. It looks like a "P" to me. But I think it is my writing. But I don't see how I ever——

Mr. CRAWFORD. Well, never mind that, Mr. Blaustein.

Mr. CAMPBELL. Now, we have proved it for you. It was not proved before.

Mr. CRAWFORD. Well, we will adjourn.

WITNESS. Mr. Crawford, pardon me a minute, please.

Mr. CRAWFORD. We will adjourn. Court has adjourned, Mr. Blaustein.

WITNESS. All right, sir.

Mr. CRAWFORD. Any other matter we will take up after recess.

(A recess was here taken until 2 o'clock p. m.)

11309 By Mr. CRAWFORD:

Q. I show you again petitioner's Exhibit 758, being the postal card referred to in your last answer, and ask you to examine it carefully and state now what your conclusion is as to whether you wrote it or not.

Mr. CAMPBELL. Take plenty of time, Mr. Blaustein, and look it through if you like.

Mr. MORRISON. Oh, I do not suppose it is necessary to see what it states in order to know whether he wrote it or not. He knows his handwriting. He has already said that he wrote it. I don't know what more you want.

Mr. CAMPBELL. He said he thought so.

Mr. MORRISON. He said he wrote it, and you yourself conceded here that it had been proven, Mr. Campbell.

A. Yes, sir.

Q. You did write it?—A. I did write it.

Q. Now, what is the date of that postal card? Or, if you are unable to make out the date, see what the postmark is that is on the other side.—A. 1900.

Q. January, 1900, isn't it?—A. Yes, sir.

Q. Has your handwriting changed any since January, 1900?—A. Considerably. I write a better hand than I used to write.

Q. Does the writing on that postal card resemble your present handwriting?—A. No, sir.

Q. Is that the reason why you hesitated in deciding whether it was yours or not?—A. Yes, sir. After I had it the second time I

noticed the figures 8-1/2 and 7-1/2, and I know this is my writing.

Q. How did you come to sign the name as it appears at
11310 the foot of the postal card?—A. That is something I don't know myself. I must have been in a hurry. I never signed that name "P." It is an "L," cut down the top piece. I must have been in a hurry in writing it, because I never signed my name in that shape before.

Q. Do you now recall the name of the photographer who photographed defendants' Exhibit 210?—A. Yes.

Q. What was it?—A. Edelstein.

Q. Where is his studio?—A. Three hundred block, North Charles street.

Q. And is he in business there still?—A. Yes, sir; to the best of my knowledge he is.

Q. Is that the information you wanted to give just at the moment of adjournment?—A. Yes, sir. That just came to my mind at the moment of the adjournment.

Q. That came to your mind before we adjourned, did it?—A. Yes, sir.

Q. Mr. Cooper, page 2401 of the printed record, referring to the Southern Oil Company, testified: "We learned that they" (meaning the Southern Oil Company) "offered some of our trade as much as a barrel of oil if they would begin an account with him" (meaning the Southern Company)—"stop with us and begin with them" (meaning the Southern Company). Did you ever give away any oil in Winchester to customers?—A. No, sir; not to my recollection.

Q. Did the Southern Oil Company ever do it to your knowledge?—A. No, sir.

Q. Or by your authority?—A. Not by my authority.

Q. Did you ever offer a barrel of oil to a customer if the
11311 customer would trade with you?—A. I can't remember that; I did not.

Q. Mr. Cooper testified, page 2404, as follows: "Q. Say from 1895 down to 1905; during those ten years were you always selling your oil, per gallon, at a higher price than the Standard Oil Company?—A. I think we did." What do you say as to that?—A. I was not there in 1895, nor was I there in 1905.

Q. What year was the Southern Oil Company there?—A. In 1900; the latter part of 1899 and 1900.

Q. Now, during the time that you were acquainted with the circumstances, when the Southern Oil Company was there, what was the fact as to his being above or below the Standard Oil Company's price?—A. I will explain to you, Mr. Crawford. Cooper used to make a habit, whenever the Standard Oil Company used to advance their price, to stay below for a month or two and get all the trade he could; and when the Standard Oil Company used to decline their market, he stayed perhaps a week or a few days at a higher price. But he was always at a lower price more than he was at a higher price.

Q. You speak of the Standard declining its market. What do you mean by that?—A. The Standard used to reduce the market, for instance, from 8 cents to 7½ cents. Cooper used to stay for a few days at 8 cents.

Q. What territory would that decline cover?—A. Winchester.

Q. Would it be connected with a decline anywhere else, do you know?—A. I do not; I do not know.

Q. Mr. Metzel, page 2410 of the printed record, testified
11312 that on an occasion when he was not present you made the statement that the Red "C" Oil Company was part of the Standard Oil Company; that they got their oil from the Standard Oil Company; that there were underground pipes from the Standard Oil Works in Canton to the Red "C" Oil Company's works at Highlandtown, and that he had seen the pipes. Did you ever make that statement?—A. I do not remember making the statement that the Red "C" Oil Company was part of the Standard Oil Company; I also do not remember stating that their pipe line is connected with the Standard Oil Company, but it seems to me that I have made the statement that they have bought oil from the Standard Oil Company.

Q. Was that true?—A. That was true.

Q. Did you state that there were pipes connecting the Red "C" Company's works with the Standard Oil Company's works, and that you had seen the pipes?—A. No, sir.

Mr. MORRISON. That is objected to. It has already been asked and already been answered.

Mr. CRAWFORD. Well, he can answer it twice to make it certain.

Mr. MORRISON. Of course, all I can do is to object.

Q. Mr. Metzel also stated (page 2410) that he had heard you say that the Southern Oil Company was independent. Is that true?—A. I have never met Mr. Metzel in my life. I don't know him.

Q. He also said he heard you say that the Dixie Oil Company was independent, and that the Eagle Oil Company was independent, and that it belonged to you. If you never saw him, I suppose
11313 you did not say those things to him?—A. No, sir.

Q. Did you ever say them in his presence?—A. I don't think so. I never met him.

Q. He also said that you said to him that you were a refiner, and that your principal business was the lubricating product; that the refined oil was simply a by-product, and you had to get rid of it somehow, and it didn't make any difference what you got for it, that it was all clear profit. Is that true?—A. No, sir; I never met the gentleman.

Q. Did you say any of those things to Mr. Metzel?—A. I never met him. I never talked to him in my life or in his presence.

Q. Did you make those statements to anybody?—A. No, sir. I beg your pardon. I may have made the statement to somebody about the independent.

Q. How is that?—A. I don't want to say that I did not make a statement to anybody. I may have made a statement.

Q. Well, I asked you particularly with reference to whether you ever stated to anybody that you were a refiner; that your principal business was the lubricating product; that the refined oil was simply a by-product, and you had to get rid of it somehow, and it did not make any difference what you got for it.—A. I never made the statement to Metzel.

Q. Did you ever make those statements to anybody?—A. To nobody.

Q. He says that he heard you make those statements at Harrisonburg, Virginia, to the Snell Grocery Company, and also at the Revere Hotel.—A. I did not.

11314 Q. You did not make them?—A. No.

Q. He also said, referring to the Southern Oil Company and the Eagle Oil Company among others, that they would pay an extra price for empty barrels. Did you pay any extra price for empty barrels?—A. The Eagle Oil Company never handled and never bought any barrels.

Q. Did the Southern?—A. Never paid any extra price. I got my price from the Standard Oil Company, how much to pay for the empty barrels. He also said that they, referring to the same companies, would give rake-offs of all kinds.—A. Rake-offs?

Q. Rake-offs. Did you give any rake-offs?—A. No, sir.

Q. Did either the Standard or the Eagle give any rake-offs?—A. I don't know what he means by that—"rake-off."

Q. Well, it says "They would buy things from a merchant, cigars and shoes."—A. I used to buy cigars from the merchants.

Q. Why did you buy them?—A. Because I wanted to smoke.

Q. That is a good answer. Did you buy any shoes?—A. No, sir.

Q. To your knowledge, were any shoes bought by the Southern or the Eagle Oil Company or anybody connected with it?—A. No, sir; I don't know it.

Q. Speaking of the same companies, Mr. Metzel said (page 2411): "They never went near a Standard Oil Company's customers." Is that true?—A. It is not. Used to sell to all the trade we could.

11315 Q. This trade which you acquired in Baltimore, or which the Eagle Oil Company acquired in Baltimore, was any part of that trade which you had sold previously, when you were first employed by the Standard Oil Company?—A. Yes, sir.

Q. What proportion of it?—A. Oh, about 75 to 90 per cent.

Q. Was that this special trade that you testified about, where you used your ability as a linguist, etc.?—A. I did.

Q. That was largely the trade which you recovered when the Eagle Oil Company opened up there in Baltimore, was it?—A. Yes, sir.

Q. How did you get it back; by what means? By what means did you recover that trade?—A. By canvassing, asking them to patronize me, stating that I could not travel any more for the company, that my family would not let me; that this is the only way for me to make a living. I also extended them the same credit which they used to get from the Red "C" and the Crew-Levick Oil companies.

Q. And did you address these different customers in the language which they spoke?—A. Yes, sir.

Q. I think you stated, did you not, that a large part of this trade was Jewish?—A. Yes, sir; about 50 per cent of it.

Q. Did you get that trade back by cutting prices?—A. I did not cut any prices.

Q. Except as far as you have testified in regard to this Crook episode, did the Eagle Oil Company cut prices there in Baltimore?—A. Not to my recollection.

Q. Did the Eagle Oil Company offer or pay any rebates to the trade which you handled there in Baltimore?—A. When?

Q. In Baltimore, the Eagle Oil Company.—A. What year was it?

11316 Q. When the Eagle was operating there in Baltimore.—A. When we first started?

Q. Yes.—A. No, sir.

Q. Mr. Fehsenfeld further testified (page 2320) that you endeavored to hire his tank-wagon drivers; that on the first wagon which you operated at Baltimore, or, rather, the first day you started out, you took with you one of his men, Herman Minnie by name. What about that?—A. I did not. The first tank wagon I put on I employed a man by the name of John Geisz, and he is still in my employ. I was in business about six or eight months. One day Herman Minnie came to me and asked for a job.

Mr. MORRISON. That is objected to as not responsive to any question.

Q. Go on.—A. I asked him if he was still employed by the Red "C" Oil Company. He told me no, that he quit. I told him at present I did not need a man, but as soon as I will put another wagon on I will give you a call.

Mr. MORRISON. The conversation is objected to as immaterial and as hearsay.

Mr. CRAWFORD. I desire to state that this conversation is in direct contradiction of the testimony brought out by Government counsel, printed on page 2320.

Mr. MORRISON. If that is true, the record will show it.

Mr. CRAWFORD. That is the case, and you, Mr. Morrison, brought out the testimony. Now this is in direct contradiction of your testimony; I mean to say of testimony brought out by your questions from your own witnesses.

11317 Mr. MORRISON. That does not give you any right to put in hearsay testimony.

Mr. CRAWFORD. We will submit that to the opinion of the court.

Q. Now go on and tell what the facts were in regard to Mr. Minnie.—A. Do you want me to repeat it?

Q. No. What did you do in regard to Minnie?—A. Minnie came to me and asked for a job, and I told him I did not need anybody; but I asked him if he was still employed by the Red "C" Oil Company or did he quit, and he told me he quit. I told him I did not

need anybody at present, but I will put on a new wagon in a few weeks and if I will need a man I will give him a job, as I would anybody else, which I did.

Q. How soon after that?—A. Three or four weeks; I don't recall that.

Q. Mr. Fehsenfeld also testified, page 2320, as follows: "Our other tank-wagon drivers reported to us that Blaustein had made overtures to them." Did you or did the Eagle Oil Company make any overtures to any of the tank-wagon drivers employed by the Red "C" Oil Company?—A. I don't know of any personally.

Q. You did not make any?—A. I did not.

Q. He says in that same connection that one of his men reported that he was offered (presumably by you) $18 a week. Did you offer any driver $18 a week?—A. No, sir; I was authorized to pay my men $12 a week.

Q. Did any one else, to your knowledge, in your employ make that offer?—A. Nobody.

Q. Mr. Fehsenfeld said, on the same page, 2320, "Blaustein,
11318 or the Eagle Oil Company, sought only, as far as I was able to learn, the customers of independent concerns." Is it true that you solicited trade only from the customers and of independent concerns?—A. No, sir. When I started I went back to my old customers whom I used to have before I left Baltimore; confined myself only to them for some time, until Mr. Fehsenfeld advertised me, telling the people that I am Standard Oil Company, and then the people used to call me up over the phone and ask me to supply them with oil. Naturally I would have to send a wagon to some of them to sell them oil. They demanded it.

Q. Did you solicit any of the customers of the Standard Oil Company?—A. Solicited everybody's customers.

Q. He also says: "He secured the trade of Leo Blank, who was an oil peddler in Baltimore, and whom we had been selling for several years. Blank came to me at different times and told me of the predatory methods that had been employed against him." Did you employ any predatory methods against this man Blank?—A. I did not.

Q. What kind of a business was he in?—A. In the peddling business.

Q. Selling to whom?—A. To the consumers.

Q. To whom did you sell?—A. Wholesaling, to the stores.

Q. Did you do anything to injure his business at all?—A. I did not.

Q. Did you do anything?—A. I did not do it.

Q. Mr. Fehsenfeld says that he (referring to Leo Blank) "informed me of the details of the fight." Did you have any
11319 fight with Blank?—A. I did not come in contact with his trade; I did not fight him.

Q. Mr. Fehsenfeld says, on page 2321, that the Eagle Oil Company "cut the Standard Oil Company's prices, disregarding them en-

tirely." Is that true?—A. I don't remember of any except in 1904, the time that Crew-Levick made the contract with Crook.

Q. You mean that Crook affair?—A. Yes, sir.

Q. Apart from that——A. I don't remember of any.

Q. Mr. Fehsenfeld testified, page 2342, to the effect that your company cut prices against his tank wagons. Did the Eagle Oil Company ever cut prices under the tank-wagon prices of the Red "C" Oil Company?—A. I don't remember of any except in 1904.

Q. That is Crook?—A. Yes.

Q. Well, apart [illegible] that Crook episode to which you testified.—A. I don't remember any.

Q. What competition has the Standard Oil Company in Baltimore now? Who are the competitors?—A. The Red "C," Crew-Levick, the National, and one started last week by the name of the Maryland Oil Company.

Q. Do you know of any instances within the last three years where any of these companies have cut the Standard Oil prices there?—A. Yes, sir; a good many.

Q. Can you mention some of them?—A. Right away. I want to state there used to be the Southern Oil Company in 1907 and the beginning of 1908.

Q. You mean the National did?—A. Yes; the National absorbed them; bought them out.

11320 Q. That is not the same Southern Oil Company that you previously testified to?—A. No, sir.

Q. Now, can you mention any of those instances where any of those leading concerns have cut the prices of the Standard Oil Company?—A. Take, for instance, John Rash, Hanover street; the Crew-Levick Company have been giving him half a cent a gallon rebate on oil.

Q. About when was this?—A. For the last two or three years.

Q. Do you mean through the last two or three years or some one time?—A. All through two or three years.

Q. How do you know that?—A. John Rash used to buy from me, and he told me the reason he quit was he was getting half a cent off. He also told me that as soon as they will stop he will come back to me.

Mr. MORRISON. That is objected to because it is hearsay evidence.

Q. Did you get that information in the course of your business?—A. Yes, sir.

Q. By coming in contact with the trade?—A. Yes, sir.

Q. Do you recall anybody else?—A. I can recall a case; I remember a man by the name of Cohen, on Dover street.

Q. Cohen?—A. Yes. He used to buy from me. When the Southern Oil Company started in business they gave him half a cent, and after the National absorbed them they gave him a half a cent.

Q. After the National absorbed the Southern?—A. The Southern. I went there one day and told Cohen that I do not believe——

Mr. MORRISON. That is objected to as hearsay testimony.

11321 WITNESS.—that he is getting half a cent rebate. He told me, "I will prove it to you." He says, "I will call in my clerk and I will ask him how much money he received this morning from the National Oil Company's driver." I believe he told him 10 cents. His clerk did not hear my conversation with Mr. Cohen. He took off the ticket from the file and showed it to me, that he bought twenty gallons of oil that day. I think this is proof enough.

Q. Twenty gallons at what price?—A. The ticket called for the full price, and the clerk gave Mr. Cohen's clerk half a cent off.

Q. Do you recall any other instance?—A. I know a case of a man by the name of Piverstein. He lives in West street.

Q. West street?—A. Yes, sir. He used to buy from me, and the National took him away, by him telling me that he is getting a half a cent. I went there one day and I asked him for the business, and he told me. He says, "You can't blame it on me; I am getting half a cent off." I said, "I don't believe you are." He took his ticket off from the file and showed it to me—10 gallons of oil, 75 cents. This man keeps a daybook, what they call a cashbook, in which he puts down all his purchases during the day. He showed me 70 cents for oil. So I am sure that he is getting a half a cent.

11322 Q. Do you remember any other instance?—A. There is a party by the name of Richmond, keeps a store on Columbia avenue. My driver came in one day——

Mr. MORRISON. That is objected to as hearsay.

A. And told me——

Q. Do not at present tell us what your driver said. What did you do? Did you do anything about it yourself?—A. Yes, sir; I went over to Mr. Richmond myself.

Q. Went over to see Mr. Richmond?—A. After the driver——

Q. In consequence of something your driver said to you?—A. Yes, sir.

Q. Very well. Now, what happened between you and Mr. Richmond?

Mr. MORRISON. That is objected to as hearsay.

A. Mr. Richmond told me that he is getting ½ cent on oil, but they didn't give him anything on gasoline, and he is willing to give me the gasoline; he will buy the oil from them. There is another case, a party by the name of Rothbell on South Fremont avenue. This party is a large buyer, and the National took him away with ½ cent rebate on oil, and Mr. Rothbell gave me the gasoline business for a while, until the National gave him also ½ cent on the gasoline. I did not believe Mr. Rothbell. One day I went into Rothbell's store. While I was there the tank wagon pulled along, and I went back in the kitchen, a small room from the store, and I waited until the driver put him in the oil. He gave him 20 gallons of oil. The price was at that time 8 cents. While the driver made his ticket out, I

11323 came out from the kitchen and I have seen that he put 10 cents on the counter for that merchant from his pocket. He

collected $1.60, but he gave him back 10 cents from some other purse he had in his pocket. I seen that myself.

Q. How many gallons did that $1.60 cover?—A. Twenty gallons.

Q. And 10 cents would be——A. ½ cent on a gallon.

Q. Had these various customers whom you named previously purchased from you?—A. From the Standard Oil Company.

Q. From the Standard Oil Company?—A. Yes, sir.

Q. Did you lose them after these transactions?—A. Yes, sir; I lost them.

Q. Can you mention any other instance?—A. I know a party by the name of Abrahamson, who keeps corner of Penn and Portland streets.

Q. Well, what about him?—A. He has been getting ½ cent on oil and gasoline.

Q. From whom?—A. From the National Oil Company.

Q. What do you know about that?—A. This party used to buy from me until the National came along and gave him this inducement. Then the driver started to cut him out. He would not give him any more for a week or ten days. Mr. Abrahamson called me up and told me to supply him with oil again.

Q. Did you lose him for a while?—A. Yes, sir; but after he came back the driver gave him a rebate back again and I lost him again.

Q. Anybody else that you recall?—A. I have got so many
11324 of them that I can't recall. I know cases where the Red "C" Oil Company have given away tanks to whom we refused to give tanks to.

Q. Well, whom?—A. There is a case on the corner of Lombard and Penn; I can't recall his name; Olivitz. His tanks sprung aleak, and he sent for me to give him new tanks. I explained to him that the Standard Oil Company don't give any tanks, nor do they loan any tanks. All I can do for him is to sell him those tanks at cost price, which he refused. The Red "C" Oil Company sent him over tanks, and I have lost his business.

Q. How do you know they sent him the tanks?—A. I know, because I offered this party tanks at cost price. The Standard Oil Company are getting those tanks, I think, cheaper than anybody else.

Q. Yes; but how do you know he got the Red "C" tanks?—A. He told me so.

Q. Did you see the tanks?—A. Yes, sir. I know a case, a party by the name of Gosling on South Fremont avenue (700 block, I believe), has been dealing with the Standard Oil Company for twelve years. One day her oil tank sprung aleak and she asked the Company for a tank.

Q. Is this a lady?—A. Yes, it was a lady.

Q. Mrs. Gosling?—A. Mrs. Gosling. I went over to see her and I explained it to her that we do not give any tanks, and we do not loan
any tanks. She received a tank from the Southern Oil Com-
11325 pany. She told me so herself. She says, "I have been buying

from you twelve years." She said, "Now, I am not going to buy for twelve years again."

Q. How do you know she got a tank from the Southern Oil Company?—A. Because I offered her a second-handed tank which I could have gotten for a dollar and a half from another party who was willing to sell to her for a dollar and a half. If she had a new tank it would have cost her probably $3.50, and she would have paid——

Q. How do you know that it came from the Southern Oil Company?—A. It was the Southern Oil Company's name on it, on the tank.

Q. Did she say anything about it?—A. Yes, sir.

Mr. MORRISON. That is objected to as immaterial and hearsay.

Q. Anything else, any other instances that you recall?—A. I know a party by the name of Hoffenberg on Montgomery street. This party started in business, and he wanted the Standard Oil Company to give him or loan him tanks, which he was refused. The Southern Oil Company furnished him with two tanks. After the National absorbed the Southern Oil Company, and this Mr. Hoffenberg bought from me three or four times, the National Oil Company has taken those tanks away from him because he gave me the business.

Q. Did you lose his business in the first instance?—A. They sent a truck after those tanks, but he had some oil in the tanks which they didn't take, and Mr. Hoffenberg sent for me and told me if I can't duplicate those tanks, he has got to go back to the National.

11326 I told him, I can't duplicate those tanks, and if he does not want to give me the business, why let him go ahead and buy from the National.

Q. From whom did he buy after that?—A. From the National. He only bought from me about half a dozen times.

Q. Had he previously been your customer?—A. No. He started a new customer.

Q. These other persons that you testified to, with the exception of the last one, had they previously been your customers?—A. Yes, sir.

Q. And after the circumstances which you have just testified to, did you lose them?—A. Yes, sir.

Q. Did you recall anyone else?—A. There is a party by the name of Schwartz; he lives on West Pratt street. He sent for me and told me that the Southern Oil Company representative, a man by the name of Reed, has offered him ½ cent on oil and ½ cent on gasoline.

Mr. MORRISON. That is objected to as hearsay.

Q. Well?—A. And if I don't do the same he is going to buy from them. I explained to Mr. Schwartz that we can't give him any rebates, but our service and our oil is equal to their rebates, which he promised to let me know. I went from there up the street and I met Mr. Reed on Columbia avenue, and I asked him what he is going to do—why he is making those rebates to customers. He denied it. I asked him to come with me in my buggy and face Mr. Schwartz, if he is an honest man. He refused to do so.

11327 Q. What was the result on your trade in that instance? Did you hold this customer's trade or not?—A. I did hold this customer.

Q. You did hold it?—A. Yes, sir.

Q. Do you recall any other instance? Do you remember a man by the name of Abel?—A. Yes, sir; on Columbia avenue.

Q. What about them?—A. They went over there, the Southern, and offered him ½ cent rebate. Abel sent for me, and I told him that we can't give him any rebates; that our price——

Mr. MORRISON. That is objected to as hearsay.

Q. Who told you this—Abel?—A. Yes, sir; that our price is for everybody. He say he no care; he is going to buy from the cheapest man, and I lost him for about a month or two.

Q. Did you see any tank-wagon ticket in that case?—A. The tank-wagon ticket always calls for the full price.

Q. Did you see any tank-wagon ticket?—A. I did; yes, sir.

Q. Did you see any tank-wagon tickets in any of these other instances you have spoken of?—A. Yes, sir.

Q. Do you know a concern called Gross?—A. G. Gross, on Columbia avenue. Yes, sir; I lost him by getting rebates from the Southern Oil Company.

Q. How do you know that he got a rebate?—A. He sent for me and told me that he can buy ½ cent cheaper. He has been buying from the company for years.

Mr. MORRISON. That is objected to as hearsay.

Q. Did he show you any ticket?—A. Yes, sir, he showed me
11328 a ticket when he bought. The ticket was in full, but he has been getting ½ cent right cash from the driver.

Q. Had he previously been your customer?—A. All the time.

Q. Did you lose him?—A. Yes, sir; I lost him.

Q. Do you know a man named C. W. Gross, on Scott and Stockholm streets?—A. Yes, sir.

Q. Do you know anything about them?—A. The same case. The Southern Oil Company went there and took him away with ½ cent rebate.

Q. You got your information in the same way in that case as in the others, did you?—A. Yes, sir.

Q. Do you remember a man by the name of Jacob, on Bayard street?—A. Yes, sir.

Q. What about him?—A. Jacob, on Bayard street, had been buying from the Standard Oil Company since he has been in business. The Southern Oil Company has made an arrangement with Jacobs, giving him 5 gallons of oil on 50.

Q. What do you mean by 5 gallons on 50?—A. Whenever he put in 50 gallons of oil they used to put in 5 extra free of charge. I went over to see Mr. Jacobs, and he stated to me that I would not be any better; that he never would have changed from the Standard Oil Company; but he say he can make almost a cent a gallon. Five gallons of oil at 8 cents per gallon is 40 cents; almost a cent, and he

is compelled to leave me. I ask Mr. Jacobs if he has any objection for me to tell the rest of the Southern Oil Company's trade. He said none whatever; he was not told that he should be under a secret at all. He dealt with them until——

11329 Q. Do you know a man named A. Lang, on Andre street?—A. Yes, sir; A. Lang, on Andre street, has been dividing between the Standard and the Crew-Levick. The Southern Oil Company went over there and gave him ½ cent rebate, and he stopped buying from Crew-Levick and also from the Standard.

Q. How do you know that?—A. From the same sources.

Q. What were they?—A. He told me that he is buying ½ cent cheaper.

Mr. MORRISON. That is objected to as hearsay.

Q. Did you lose his business?—A. Lost his business.

Q. Did you see any tank-wagon ticket or other writing at that time?—A. Yes, sir. I saw a tank-wagon ticket for the full market price.

Q. He showed it to you?—A. Yes, sir.

Q. Do you know a man named Glick?—A. On Warner street; yes, sir.

Q. What about him?—A. I lost him for the same reason, getting half a cent cheaper.

Q. Did he tell you that?—A. Yes, sir.

Q. Did he show you anything?—A. Showed me a ticket. He is a man who never changed unless he gets some inducements.

Q. Well, never mind that.

Mr. MORRISON. That is objected to, and I move to strike it out.

Mr. CRAWFORD. I consent that that be stricken out.

Q. He showed you a ticket, did he?—A. Yes, sir. I know a party by the name of Brown Brothers, on South Eutaw street—

11330 no, South—I can't recall the address.

Q. Brown Brothers?—A. Yes, sir; South Paca street. They are large buyers and they have been buying from the company for a good many years. They also handle a great deal of other oils from the Standard Oil Company, and they have quit the company by getting ½ cent from the Southern Oil Company.

Q. How do you know that?—A. I and Brown are personal friends. He would never leave me——

Q. Never mind that. Did Brown tell you?—A. Yes, sir.

Mr. MORRISON. I move to strike that out as hearsay.

Q. What did he say?—A. He says he is buying for ½ cent cheaper from the Southern Oil Company.

Q. Did he show you anything, any ticket or anything of that sort?—A. He showed me a ticket; yes, sir.

Q. Do you remember a man named Hammond at Cross and Warner streets?—A. Yes, sir; his name is Hammond.

Q. What about him?—A. The same reason, that the Southern took him away with ½ cent, but they would not give him anything on gaso-

line, and he gave me his gasoline business and he gave them the oil business.

Q. Had he previously bought oil from you?—A. Bought from the Standard Oil Company.

Q. Did he buy oil from you after this happened? Did he buy oil from you after the Southern or National gave him ½ cent?—A. No, sir; only gasoline.

Q. How do you know that? How did you find that out? How did he find out that he got that ½ cent?—A. He told me that himself.

11331 Mr. MORRISON. I move to strike that answer out as hearsay.

Q. Did he show you anything?—A. He showed me his ticket.

Q. You referred to a man named Richmond, I think—L. Richmond?—A. Yes, sir; on Columbia avenue.

Q. In connection with the cut price which you say he received, did you receive a letter from him?—A. Yes, sir; I received a note.

(Paper marked "Defendants' Exhibit 211.")

Q. I hand you defendants' Exhibit 211. Is that the note that you received from Mr. Richmond in this connection?—A. Yes, sir.

Mr. CRAWFORD. I offer it in evidence.

Defendants' Exhibit 211 is as follows:

"Mr. Blaustein: Mr. Carter treated us very well but we are getting our oil from the National at 7½, and I don't believe you would be any better. L. Richmond, 820 Columbia ave."

By Mr. MORRISON:

Q. Do you know Richmond's handwriting?—A. Yes, sir; I do.

Q. This is his handwriting, is it, the signature here?—A. Yes, sir.

Q. You have seen him write?—A. I did not see him write——

Q. How do you know his handwriting?—A. I have seen him write the same handwriting before.

Q. You have seen him write, have you?—A. I saw him

11332 write before this, but not this note I didn't.

Mr. CRAWFORD. You have seen him write, but you did not see him write this note?

WITNESS. Yes, sir.

Q. How did you happen to see him write?—A. Oh, I have been going there for some time to his house.

Q. You have. When did you ever see him write, and what did you see him write?—A. I saw him write his orders on his book.

Q. Orders for oil?—A. No, sir, orders for groceries that he delivers to customers.

Q. You stood over him and watched him write, so as to observe his handwriting?—A. I have been going with this man for several years. I know his writing.

Q. You have been going to the store?—A. Yes, sir.

Q. And in that way you have learned his handwriting, have you?—A. Yes, sir.

Q. That is the only way, isn't it?—A. That is the only way.

Mr. CRAWFORD. You have seen him write what?

Q. You have seen him write orders. You have seen him, when somebody would give him an order, write it down in the book. Is that it?

Mr. CRAWFORD. I object to that as imcompetent. The proper way to prove a handwriting is for the witness to state that he has seen the man write, and the witness has so stated.

Q. Is that what you saw him write—orders on the book?—A. Yes, sir. I saw him write orders on the book.

Q. And you saw that very often, I suppose?—A. Yes, sir.

11333 Q. And you would be close enough to him when he was writing an order that you had no interest in whatever, to observe his handwriting——

Mr. CRAWFORD. He has not said that.

Q. —so that you are now able to swear to it, are you?—A. I know that it is his handwriting.

Q. Now answer my question.

Mr. CRAWFORD. Just read that question to him.

The reporter read the question.

A. I saw Mr. Richmond writing.

Q. No, answer my question. Just read the question to him again.

The reporter read the question again.

A. I am able to swear this is his writing.

Q. Now, what order did you ever see him write?—A. Oh, different orders.

Q. Give us one now. Tell us just one.—A. He used to put down——

Q. No, not what he used to. Give us one particular case.—A.—put down in the customers' books the bill of the groceries——

Q. No, no.

Mr. CRAWFORD. Let him answer the question.

Q. Give some particular order if you can.—A. No, I can not.

Q. Well, can you give the name of the person that the goods were to be sold to?—A. I can not.

Q. You can't do that?—A. No, sir.

11334 Q. Did you see him write a word?—A. Yes, sir, I saw him write.

Q. What word?—A. A good many words.

Q. What words? Give us one.—A. Sugar, flour, potatoes.

Q. Oh, you remember that now, do you?—A. Yes, sir.

Q. You know just how he writes "sugar," do you, and "flour," and "potatoes?"—A. Yes, sir.

Q. What business had you got looking over to see what this man's handwriting was?—A. Why, I had never had any business to look, but I have been there so often I could not help but see it.

Q. You had no interest in these orders, had you?—A. No, I had not.

Q. Not a bit. That was his grocery business, and his grocer's business was not your business at all?—A. No, sir.

Q. Did you watch to see how he wrote?—A. Yes, many times I did watch to see what he put down.

Q. What did you do that for?—A. Because I didn't want to interrupt him while he was writing.

Q. So that is the reason you watched to see him write it down?—A. To wait until he got through.

Q. Well, you watched to see how he wrote, didn't you?—A. Yes, sir.

Q. And what he wrote?—A. Very often, yes.

Q. And yet that was none of your business?—A. Well, that was none of my business at the time, but I know his handwriting.

Q. Now, on that sort of knowledge you are testifying here,
11335 are you, to a man's handwriting?—A. Well, this is his handwriting. I recognize it.

Q. Are you a better judge of his handwriting than you are of your own handwriting?—A. That has been ten years ago.

Q. Are you a better judge of his handwriting than you are of your own handwriting?—A. I am not.

Q. No. You could not tell here this morning whether you wrote that or not, could you (referring to petitioner's Exhibit 758)?—A. Because that has been ten years ago.

Q. No, it had not been ten years ago.—A. Yes, sir.

Mr. CRAWFORD. Eight years ago.

A. Eight years ago, and I write now a great deal better and plainer.

Q. No, no; do you know your own handwriting as well as you know this man's handwriting right here?—A. About the same thing, yes.

Q. About the same thing?—A. Yes.

Q. You first swore that you did not think you wrote that, this morning, didn't you?—A. I did not swear I didn't—I didn't recognize it at first.

Q. Didn't you first swear that you didn't think you wrote it?—A. I did; I didn't recognize it.

Q. How is that?—A. I didn't recognize it.

Q. You read it all through, didn't you?—A. No, sir, I had not read it all through. I just glanced over it.

Q. You spent a minute or so studying it over, didn't you?—A. About.

11336 Q. And then after you saw me hand that card to Mr. Chase here and make a remark to him, you wanted to look at it again, didn't you?—A. I wanted to see that again, yes, sir. I recognized my figures.

Q. You were not sure then, were you, that you wrote it?—A. Yes, after I took it again and looked at the figures, I recognized it.

Q. Why didn't you say so then?—A. Well, I did say so.

Mr. CRAWFORD. He did say so.

A. I have said I wrote it.

Q. No, you said you thought so then, didn't you?—A. I told you I believed I wrote it.

Q. You had seen yourself write, hadn't you, just as often as you ever saw Richmond write?—A. I know, but this happened eight years ago, and Richmond a year ago.

Q. Yes, I know. You have told us that now and we will assume that that is so. You had seen yourself write, hadn't you, writing letters in which you were deeply interested, for years before that, hadn't you? A. Yes, sir.

Q. And still you could not tell your own handwriting?—A. It happened eight years ago.

Q. Are you an expert in handwriting?—A. No, sir.

By Mr. CRAWFORD:

Q. Now, Mr. Blaustein, you have seen Mr. Richmond, the writer of this letter, write a number of times, have you?—A. Yes, sir.

Q. And have you any doubt that that is his handwriting?—A. Not at all.

Q. Are you familiar with his handwriting?—A. Yes, sir.

11337 Mr. CRAWFORD. Do you want to object to that?

Mr. MORRISON. I want to ask him a little more about his handwriting.

Mr. CRAWFORD. I object to your examining him except as to this exhibit, Mr. Morrison.

Mr. MORRISON. Let me see if that is your handwriting on that postal card.

Mr. CRAWFORD. I object to any further questions on cross-examination as to anything except this exhibit I have just offered. You will have the opportunity when you come to your turn for general cross-examination.

Q. (Showing witness paper.) Is that your signature?

Mr. CRAWFORD. I object to any further——

Mr. MORRISON. Well, you have your objection down. I understand that.

Mr. CRAWFORD. Well, I instruct the witness not to answer the question.

Mr. MORRISON. All right, then.

Mr. CRAWFORD. This is not your turn, and you have no business to interpose your cross-examination into my direct except as to that exhibit.

Q. Is that your handwriting?

Mr. CRAWFORD. Wait a moment, Mr. Blaustein.

Q. Wait a moment. Do you refuse?

Mr. CRAWFORD. I will not wait.

Mr. MORRISON. All right.

Mr. CRAWFORD. I instruct the witness not to answer and now I proceed to ask my question on direct examination.

11338 Mr. MORRISON. Now we have it. You instruct him not to answer (to the witness) and you refuse to answer?

Mr. CRAWFORD. I instruct the witness not to answer until his own cross-examination.

Mr. MORRISON. Now, what does the witness say? Do you propose to answer, or don't you?

Mr. CRAWFORD. Mr. Blaustein——

Mr. MORRISON. What do you say about that?

Mr. CRAWFORD. You will answer my question now——

Mr. MORRISON. Will you answer this, is the question?

WITNESS. I look at Mr. Crawford.

Mr. MORRISON. Well, all right, then. That is all right.

By Mr. CRAWFORD:

Q. Do you remember any more of these instances of cut prices than those that you have mentioned?—A. Well, there are a good many others, Mr. Crawford, but I can not recall them.

Q. Do you remember a man named Berchon?—A. Yes, sir; 2101 Hanover street.

Q. What about him?—A. The same thing. The Southern took him away with a half cent rebate; and in August, some time during August, they cut the rebate off from Mr. Berchon and he called me up over the telephone and told me, "I will be as good as my word. I promised you at the time I left you as soon as this rebate is cut off I will give you my business back again," which he did.

Mr. MORRISON. What is that name?

11339 Mr. CRAWFORD. Berchon.

Q. How did you get that information?—A. From Mr. Berchon.

Q. Now, these various cut prices that you have testified to, Mr. Blaustein, did you report them from time to time?——A. Yes, sir.

Q. —— to your superiors?—A. I made out daily report, reported all those things which happened during my canvassing the trade, and sent it to the office.

Q. Do the facts which you have testified to in regard to these cut prices fairly illustrate the information which you received and upon which you based your reports to the company of such cuts?—A. Yes, sir.

Q. Did you get this information about the cutting of prices and the giving of tanks which you have just testified to—did you learn the facts in that regard that you have testified to, in the course of your business?—A. I learned the facts in the course of my business.

Q. Did that information come to you in your contact with the trade?—A. It did.

Cross-examination by Mr. MORRISON:

Q. When did you first go into the oil business?—A. Do you mean with the Standard Oil Company?

Q. No; with anybody.—A. Let me see—1892 or 1893; I believe it was 1892.

Q. Were you working for yourself or for somebody else—A. Working for somebody else.

Q. Who were you working for?—A. I was working for
11340 Charles Nicolai.

Q. Where?—A. Baltimore.

Q. Was that his main office?—A. In Highlandtown was his office.

Q. In Highlandtown?—A. Yes, sir.

Q. How long did you work for Nicolai?—A. Until he burned out.

Q. When was that?—A. I don't remember exactly the date.

Q. About how long?—A. I can't state that.

Q. Then, what did you do after he burned out?—A. I went to work for C. F. Habighurst.

Q. Nicolai was an independent dealer, wasn't he?—A. I can't tell you that.

Q. You don't know anything about that?—A. I don't know anything about that.

Q. Who was the next one you went with?—A. C. F. Habighurst & Co.

Q. First, what did you do for Nicolai?—A. I used to go around and sell oil.

Q. Drive wagon?—A. No, sir.

Q. The drivers ordinarily do the selling, don't they?—A. They never had any tank wagon. We sold barreled oil at that time—gasoline.

Q. Where were you selling—in Baltimore?—A. In Baltimore.

Q. To the retail trade?—A. To the wholesale trade—stores.

Q. What were you doing for the next concern that you worked for—the same thing?—A. The same thing.

Q. How long were you with them?—A. About a year or a year and a half. I can't recall the exact time.

11341 Q. When did you commence for this last—or for this second concern? What year?—A. 1893 or '94. I can't recall that.

Q. And how long were you with them, do you say?—A. For about a year or a year and a half.

Q. And you were soliciting trade, were you?—A. Yes, sir.

Q. Principally the Jewish trade?—A. Yes, sir.

Q. Where did you go next?—A. To the Standard Oil Company.

Q. When you went with the Standard Oil Company, did you do the same kind of work that you were doing before?—A. No, sir; for the Standard Oil Company I started to work on a commission; delivered the oil from tank wagon.

Q. Was the company you had worked for still doing business?—A. No; I don't think so.

Q. Did they quit as soon as you left them?—A. Oh, no; they were in business for years afterward.

Q. Yes; they were in business there afterward?—A. Yes; they went into the real estate business; started to build houses, and they failed—busted.

Q. But in the oil business?—A. In the oil business for some time.

Q. After you left they were in business for some time?—A. Yes.

Q. Did you take your customers with you?—A. Naturally.

Q. How is that?—A. I did.

Q. You went over to the Standard Oil Company and left this company?—A. I gave him notice.

Q. I am not asking that. Just answer my question.—A. Yes, sir; I did.

11342 Q. And they gave you a commission, did they?—A. Yes, sir.

Q. Did they furnish you any wagon or horses?—A. Yes, sir.

Q. How many?—A. I started with one.

Q. One wagon?—A. Yes.

Q. And what was the name under which you were selling?—A. Standard Oil Company.

Q. That was on your wagon, I suppose?—A. That was on the wagons, the name.

Q. Were you driving the wagon?—A. No, sir.

Q. What were you doing?—A. Went around with the wagon to canvass trade for the Standard Oil Company.

Q. You went along with the wagon?—A. Yes, sir.

Q. But you had a driver that did the driving?—A. Yes, sir.

Q. And you canvassed the trade for the Standard Oil Company?—A. Yes, sir.

Q. On a commission?—A. Yes, sir.

Q. What commission did you get?—A. Must I answer that, Mr. Morrison? That is a personal business.

Q. I don't know of any reason why you should not.—A. Well, if you want me to tell you—a cent a gallon.

Q. A cent a gallon?—A. Yes, sir.

Q. That is the highest commission you ever got, isn't it?—A. From the Standard Oil Company; yes, sir.

Q. Did you take care of the horse and feed him, or who furnished the feed for the horse?—A. The Standard Oil Company.

Q. You got a cent clear then, for your services?—A. Well, not exactly clear. I had to have expense money on the street.

Q. What do you mean by that—to buy cigars?—A. Buy cigars, car fare, etc.

11343 Q. It cost you something to live, too, didn't it?—A. Well, I should say it does.

Q. You did not pay the driver, did you?—A. No, sir; I did not.

Q. The fact is, you got that cent clear on every gallon you sold?—A. Yes, sir.

Q. You started out with one wagon. About how much oil did you sell a day?—A. I don't remember that any more.

Q. Can't you tell us anything about it?—A. No, sir; I can't remember.

Q. You canvassed the trade in Baltimore?—A. Yes, sir.

Q. In a densely populated district?—A. Yes, sir.

Q. You did not sell to consumers at all?—A. I did not.

Q. You sold in 5 or 10 gallon lots, or more, didn't you?—A. Yes, sir.

Q. Did you sell any in barrels?—A. I don't think so.

Q. You delivered from tank wagons?—A. Yes, sir.

Q. You kept your horse and wagon busy, didn't you, from the start?—A. I don't understand this question.

(The reporter read the question.)

A. I don't know what he means by keeping the horse busy, and wagon busy. I don't understand that.

Q. Well, if you don't understand it, I will ask you something easier?—A. Yes, sir.

Q. How long before you put on another rig?—A. Why, I can't remember that, the exact date or the month.

Q. I am not asking you the exact date.—A. About six months or five months.

Q. What did you do that for—because your business in-
11344 creased?—A. Yes, sir.

Q. Did you ever have more than two rigs?—A. No, sir.

Q. How long did you continue to get that 1-cent commission?—A. Some time in 1897.

Q. Until 1897, from what time?—A. 1895, a year and a month or two.

Q. For about two years?—A. No, sir; not two years, a year and a month or two—over a year.

Q. And when you quit, you had two drivers and two rigs?—A. I did not have anything. They were Standard Oil Company's drivers and tank wagons.

Q. But you were using them?—A. The Standard Oil Company were using them.

Q. What were you doing?—A. I was canvassing, soliciting.

Q. But you got your commission on what those two wagons sold, didn't you?—A. Yes, sir.

Q. Well, what are you quibbling about then? Didn't you understand me?—A. No, sir.

Mr. CRAWFORD. You asked him whether he quit. He never quit.

Mr. MORRISON. Well, let us see if he did not quit. He said he did.

Mr. CRAWFORD. No, he did not. Pardon me.

Mr. MORRISON. Now let me ask the witness.

Q. You did quit that, didn't you, finally? You are not working at it still, are you?—A. No, sir; I am not working at that any more now.

Q. What occurred in 1897?—A. A gentleman by the name
11345 of Mr. Crosby got manager of the refined oil department, and he reduced me a quarter of a cent a gallon.

Q. So that you got ¾ of a cent commission?—A. Yes, sir.

Q. You continued on how long, then, at ¾ of a cent commission?—A. Yes, sir.

Q. How long?—A. About three or four months, or five months, I don't remember that.

Q. Did your business increase or decrease after that?—A. I can't state that neither.

Q. What happened at the end of that period?—A. Mr. Powell got charge of the refined oil department, and he reduced me a quarter of a cent.

Q. He cut you down another quarter?—A. Yes.

Q. Was that when you quit?—A. Yes.

Q. Why did you quit?—A. I did quit.

Q. Why did you?—A. Why I quit?

Q. Yes.—A. Because I asked Mr. Powell if he can guarantee a half cent to me. I said, "Somebody may come along three months from now and reduce me another quarter and I don't know where I am going to land." He told me he can't guarantee anything, and therefore I quit.

Q. But you were satisfied to work on at the ½ cent if you could have been guaranteed that you would not be cut down further?—A. I think I would.

Q. Was your business as great then as it ever had been?—A. You mean the output, the gallonage?

Q. Yes.—A. I don't remember that.

11346 Q. Can't you tell whether it was increasing or decreasing?—A. I really can't remember that.

Q. You did not sell at all at ½ cent commission?—A. No, sir.

Q. You quit on that?—A. I quit.

Q. You told Mr. Powell you were going to quit?—A. I did quit.

Q. You told him that you were going to quit?—A. Yes, sir.

Q. He knew all about it?—A. Yes, sir.

Q. Knew he was going to lose you?—A. Yes, sir.

Q. He knew what you could do, didn't he?—A. Mr. Powell told me——

Q. No, answer the question. He knew what you could do, didn't he?—A. He knew what I could do?

Q. Yes.—A. I don't understand that.

Q. He knew, didn't he, how much business you had done?—A. I suppose he did.

Q. And he knew about what you were able to do, judging from what you had done?—A. I can't tell you what he was——

Q. Well, you give him credit with having ordinary intelligence, do you not, and for knowing pretty nearly what you were doing?—A. He was not there long enough to judge exactly.

Q. No, answer my question.—A. I can't tell you that.

Q. You can't answer?—A. Whether he knew or not, it was not up to me. I didn't ask him.

Q. Did he know that you were an accomplished linguist, and that you could speak seven different languages fluently?—A. I never asked him that.

Q. Didn't he ever find that out?—A. I suppose he did.

11347 Q. He knew all about your accomplishments, you think, didn't he?—A. What do you mean by "accomplishments?"

Q. Well, if you don't know, I will ask you something easier.—A. Yes, sir.

Q. You don't know?—A. No, sir. I don't know about accomplishments.

Q. You don't know what I mean?—A. No, sir.

Q. Well, we will pass along on that. You immediately quit the Standard Oil Company, threw up the business, and ended it right there, didn't you?—A. Oh, I had no business to throw up.

Q. Answer the question.—A. I did tell him "I am going to quit."

Q. And you did quit immediately?—A. Yes, sir.

Q. How many minutes was it before you got over to see Fehsenfeld?—A. Oh, it was about half an hour.

Q. Yes.—A. Three-quarters of an hour.

Q. You went right straight over there as fast as you could go, didn't you?—A. Yes.

Q. You told Fehsenfeld all about the business you had been doing, didn't you?—A. Yes, sir.

Q. You told him all about what customers you had, didn't you?—A. He asked me; of course I told him.

Q. You told him you had about 1,100, didn't you?—A. He did not ask me exactly the question of customers. He asked me the output.

Q. Wait a moment. I am asking you if you did not tell him you had about 1,100 customers.—A. I can't remember that.

11348 Q. You had about 1,100, hadn't you?—A. Yes, but I don't remember me telling him so.

Q. Well, you had that, hadn't you——A. I had in the neighborhood——

Q. Had that number, and you did tell him, didn't you? Didn't you go into details and tell him about the number of customers you had, and what you would be able to accomplish for him if he was willing to hire you?—A. I answered all his questions at that time, what he asked me.

Q. Didn't you do anything but answer questions?—A. That is all. He asked me how many gallons I can turn over to him. He asked me how much money I would demand, and I told him just what he asked me.

Q. Did you tell him how many languages you could speak?—A. Mr. Fehsenfeld knows that.

Q. He knows that?—A. I think he does.

Q. You had known Mr. Fehsenfeld some time, had you, knew him personally?—A. I didn't know him until that time.

Q. Did he know you?—A. I don't think he did.

Q. Then how did he know anything about your accomplishments?—A. Oh, he heard about me, I suppose.

Q. Your reputation was pretty general throughout that community, wasn't it?—A. Oh, I have been in Baltimore long enough in the oil business.

Q. And notwithstanding all that, all that Fehsenfeld would offer you was $12 a week?—A. Yes, sir.

Q. That is the ordinary price for a driver?—A. That is what he offered me. He got all the information he could out of me,

11349 and then he offered me $12 a week. He could not tell me he did not want me; he said "I will give you $12 a week." He known I won't accept that.

Q. He evidently did not want you?—A. I suppose he didn't.

Q. You took it that way, didn't you?—A. That is what I did—no, I didn't exactly take it that way, I thought he was a cheap guy at that time.

Q. You thought he was a cheap guy, and he evidently thought you were a cheap guy, didn't he?—A. I told him I could produce the goods.

Q. Do you think he believed you?—A. He didn't have to.

Q. He didn't have to, and he didn't, did he?—A. I don't know. I suppose he did.

Q. Didn't he act as if he doubted what you were telling him?—A. Well, I can't judge by that.

Q. You don't know how he sized you up?—A. No, sir.

Q. Don't you think it is true that he believed, just as he testified that he did believe, that you came there as a spy from the Standard Oil Company?—A. I can't answer as to his belief, how he believed.

Q. Didn't he act that way to you?—A. No, sir, he offered me $12 a week, and he told me——

Q. Yes, but you say that he knew that you would not take that?—A. I didn't say he knew. I knew that I can't live on $12 a week.

Q. Didn't he act a little suspicious of you?—A. No, sir. He asked me all the information he could.

Q. Did you tell him that you had been working for the
11350 Standard Oil Company up until about thirty minutes?—A. Yes, sir. I showed him my check which I received that day from the Standard Oil Company, what I have made.

Q. Now just answer the questions. When you got through with the conversation did you go anywhere else to look for employment?—A. No, sir; there was nobody else to go to look.

Q. Was there not anybody else selling oil there at that time?—A. Not that I know of that had any tank wagon there.

Q. Was the Crew-Levick Company there?—A. I don't think they were. I don't remember that.

Q. After that experience, notwithstanding the fact that you had thrown up your job with the Standard, you immediately went back to them?—A. I will explain to you if you want me to.

Q. No, no; answer my question.—A. Yes, sir.

Q. You immediately went back?—A. Yes, sir.

Q. You went right to Mr. Powell?—A. Yes, sir.

Q. How long was that after you left Mr. Powell before you got back to him?—A. Oh, about an hour, or an hour and a half.

Q. Then within an hour you went back there?—A. Yes, sir.

Q. Did you ask for your old job back again?—A. I did.

Q. And he did not give you that, but gave you something better?—A. He asked me the reason why I have come back, as I have told

him I quit, and I told him just what happened to me and Mr. Fehsenfeld.

Q. You told that in your direct examination?—A. Yes, sir.

Q. I am not asking you about that.—A. I asked him for my job.

Q. Now, just wait a minute and answer my question. You
11351 went right back to him, and did you ask him to give you a salary?—A. Yes, sir; I did. I asked him if he could put me on a salary so that I know what I am getting.

Q. What did he say to that?—A. He would let me know Monday.

Q. And on Monday he told you he would?—A. Yes, sir.

Q. How much salary?—A. I don't think you are interested in my personal affairs.

Q. Don't hesitate. We are somewhat interested in your personal affairs.—A. Are you? Well, I started on $150 a month, I believe.

Q. $150?—A. Yes.

Q. Now, was that as much as you had been making when you were selling the oil for ¼ cent a gallon commission?

Mr. CRAWFORD. He said he did not sell any at ¼ cent.

Q. Or ¾ of a cent?—A. Well, about—a little less. I made more on ¾ of a cent, but it didn't amount to very much.

Q. That was a little less than——A. Than I made at ¾ of a cent.

Q. Than you were making at ¾ of a cent?—A. Yes; but it was more than ¼ cent.

Q. Did he tell you what you would have to do?—A. No, sir; he told me to go down——

Q. No; but did he tell you in that first conversation, when he hired you for $150 a month, what the nature of your business would be—what he would expect you to do?—A. No, sir.

Q. And you didn't know?—A. I did not know. He did tell me to go back and go to work.

11352 Q. How is that?—A. He told me to go to work, and go canvass trade again with the tank wagons.

Q. Did you do that?—A. I did.

Q. How long did you work at that?—A. A couple of months or so; three months or four months; I can't remember.

Q. And then what was the next thing that you did?—A. Mr. Powell asked me if I would make a trip to Norfolk to investigate conditions there.

Q. Mr. Farquharson was the agent of the Standard Oil Company at Norfolk at that time, was he not?—A. Yes, sir.

Q. When was that? Give us the date as nearly as you can remember.—A. In 1897.

Q. Do you know what time in the year it was?—A. It was in June, July, or August. It was somewhere in those months.

Q. Did you call upon Mr. Farquharson when you got down there?—A. No, sir.

Q. He was the agent of your company there, wasn't he?—A. I know, but he had nothing to do with me.

Q. Just answer the question. He was the agent of your company there?—A. Yes, sir.

Q. Whom did you call upon there?—A. Who I was told to call on.

Q. Who was that?—A. To the merchants.

Q. You went around and saw the merchants?—A. Yes, sir.

Q. What did you go to see the merchants for?—A. Just to find out why the Standard Oil Company do not sell any more oil at those points.

Q. And you found out what the trouble was, didn't you?—A. Yes, sir.

11353 Q. I think you said there were two troubles; one was that he sold in 20-gallon cans——A. No, sir; he had the 20-gallon system.

Q. The what?—A. The 20-gallon system. He would not sell less than 20 gallons to a merchant.

Q. The 20-gallon system, and besides that he had——A. Colored drivers.

Q. Colored drivers—that seemed to be the trouble with Farquharson's trade there?—A. Yes, sir.

Q. Well, didn't the Standard Oil Company know that he had colored drivers there before you went there?—A. That is for the Standard Oil Company to answer. I can't tell you that.

Q. You don't know?—A. I can't tell you that.

Q. You don't know whether the company knew that he was selling in 20-gallon lots?—A. I reported this to Mr. Powell.

Q. Now, wait a moment. I am asking you whether you knew that the Standard Oil Company knew that he was selling only in 20-gallon lots?—A. Only through the conversation I had with Mr. Powell.

Q. From that conversation do you think he knew it?—A. I think he knew it, and he told me at the time that he many times told Mr. Farquharson to discharge the colored drivers, which he would not do.

Q. Mr. Farquharson would not follow the instructions of the main office?—A. He explained that colored drivers are better for the company, though, by working for less money than the white people.

11354 Q. Well, you reported the result of your interview with the merchants back there, didn't you, to Mr. Farquharson?—A. To Mr. who?

Q. Or to Mr. Powell?—A. I did, sir.

Q. When you reported to Mr. Farquharson—— A. I didn't report to him.

Q. Or to Mr. Powell, he directed Mr. Farquharson, didn't he, to discharge the colored drivers?—A. That was after the Eureka Oil Company was operating in Norfolk, when the drivers were discharged.

Q. Was it after that that this system of selling in 20-gallon lots was abandoned?—A. Yes, sir.

Q. Why didn't he instruct him to discharge these drivers before, do you know?—A. Mr. Powell will have to answer for that.

Q. You don't know about that?—A. I can't answer for that.

Q. Mr. Powell could have righted up the whole situation down there by doing two things, couldn't he; by instructing Mr. Farquharson to discharge colored drivers, and to abandon his plan of selling in 20-gallon lots?—A. No, sir; he could not.

Q. What else was the trouble down there?—A. I will explain to you why he could not.

Q. Well, go ahead.—A. The Standard Oil Company generally appoints a special agent at a town and they say, "We are turning over some of the business to you, and we expect you to gain. It is up to you to make a showing." And whatever method he adopts, at his point, the Standard Oil Company are only waiting for re-
11355 sults. If he loses business, they call on him. They say, "Mr. Farquharson, why did you lose business last month, or for the last six months?" He gives them all kind of excuses, which the company must have taken it for granted, until they sent me over there and I ascertained the true condition, where the fault lies.

Q. And you have told us what that fault was?—A. Yes, sir; told Mr. Powell.

Q. Now, if Mr. Powell had directed Mr. Farquharson to correct faults, what was the necessity of your going down there with a bogus company?—A. After I was there, he told him, he corrected him.

Q. Why didn't he tell him before you went there, instead of sending you there?—A. He will have to answer that. It is not up to me.

Q. That is a thing that is too hard for you to answer, isn't it?—A. I can't answer that.

Q. That is a proposition that doesn't sound reasonable, does it?—A. It does sound very reasonable.

Q. How is that?—A. To show Mr. Farquharson that Mr. Powell may have told him to do away with the colored drivers, which he would not do. Mr. Powell sent me over there to learn the true condition and prove it to him, that those colored drivers have been a failure to the company.

Q. You have told us that three or four times. Now we understand that fully, and I want you to explain, if you can, why the great Standard Oil Company did not direct Mr. Farquharson to discontinue those methods that you say were hurting your busi-
11356 ness there, and to adopt different methods, and if he did not do it instanter, why that company did not discharge him.—A. I can't answer for that.

Q. You can't answer that, can you?—A. No, sir.

Q. It was a good deal of expense to send you down there, a $150-a-month man wasn't it?—A. I can't tell you their expense.

Q. The Standard Oil Company sent you down there to get Farquharson's trade away from him, didn't they?—A. The Standard Oil Company sent me there to show Farquharson how to market oil.

Q. You were going to show them how to market it?——A. Yes, sir.

Q. By getting his trade away from him?—A. By getting his business, to show him how to run the business.

Q. By getting his business away from him. Now the Standard Oil Company paid you $150 a month and all the other expenses of running the Eureka down there for the sake of teaching Mr. Farquharson what the trouble was?—A. I think it was worth while to do that. It was a good deal better——

Q. You thought that was a mighty good investment?—A. Yes, sir; a good investment.

Q. Because that was the easiest way that the Standard Oil Company had, and the cheapest way of educating Mr. Farquharson?—A. Well, there may be another reason.

Q. No, no. Answer the question first.—A. Yes, sir; what was it? (The reporter read the question.)

A. I suppose it was.

Mr. CRAWFORD. Now finish your answer. You started to say there was another reason.

Q. Please answer my question. The Standard had all of
11357 the business there, hadn't they?—A. Not quite all; no, sir.

Q. Who else had it?—A. Well, that fellow Fivel done business there.

Q. Well, he bought his oil of the Standard?—A. He did not; I beg your pardon; he bought from the Seneca Oil Works.

Q. That was not a Standard concern?—A. I don't know whether it was or not.

Q. Now we are getting onto different ground.—A. Yes, sir.

Q. Wasn't it Fivel rather than Farquharson that the Standard Oil Company wanted to educate?—A. I don't know that.

Q. You don't know?—A. No, sir.

Q. Fivel was not buying, you say, of the Standard at all?—A. Through Mr. Farquharson's mismanagement.

Q. He was not buying of the Standard at all, was he?—A. I don't know. He may have bought some of them.

Q. Do you know when he ceased to buy of the Standard and commenced buying of this other company?—A. I do not.

Q. About the time you got there, a little while before, wasn't it?—A. I can't tell you that.

Q. Didn't you learn that from the trade?—A. No, sir.

Q. Didn't you learn that?—A. No, sir. What I learned, they are buying from Fivel, but I didn't know where Fivel was buying his goods from.

Q. And you never took pains to inquire whether Fivel had formerly bought of the Standard Oil Company or not?—A. Fivel didn't give me any chance.

Q. I didn't ask you what Fivel gave you. You did not try to find out from the trade or anybody else whose oil you were selling?—A. No; the trade don't know whose oil he is selling.

11358 Q. That was a matter of no concern to you whatever, was it?—A. Why it was, if he would give me a chance to find out, but he didn't.

Q. And the reason you did not find out who Fivel had been buying of before was that Fivel gave you no chance to do so?—A. No.

Q. Don't you suppose the Standard Oil Company knew?—A. They never told me.

Q. They kept that from you, did they?—A. They never said a word to me about Fivel.

Q. Now, you mean to testify here, do you, that you did not know that Fivel, shortly before you went to Norfolk, had been buying of the Standard Oil Company and left them and went over to this other company?—A. Fivel himself told me that night that he is not buying from the company.

Q. Yes, at that time.—A. Yes, sir.

Q. But you mean to swear now, do you, that you did not learn and that you did not know that Fivel, a short time before that, had been buying of the Standard?—A. I swear I did not know it.

Q. Did not know it, and yet you were sent down there to investigate conditions?—A. Yes, sir.

Q. And to find out the condition of the trade down there?—A. Well, there were another reason, I believe, that the company sent me there.

Q. No, no; just answer my question. You were sent there to find out the condition of the trade there, weren't you?

Mr. CRAWFORD. Let him answer that question now.

Mr. MORRISON. I will, if he answers my question.

11359 Mr. CRAWFORD. Well, he is answering it. You want to choke him off because the answer does not suit you.

Mr. MORRISON. Oh, no. I am perfectly willing he shall talk all he wants to. Please read the question.

(The reporter read the question.)

Q. You were sent there to find out the condition of the trade in Norfolk, weren't you?—A. Yes, sir; but there was another reason.

Mr. CRAWFORD. Now, go ahead and answer the question.

Q. Now, let us hear the other reason.—A. I have learned that the company were dissatisfied with Farquharson's service.

Q. Oh, yes.—A. He has been there long enough, and they give him, as a rule, plenty of chances. I believe the company sent me down there to wake him up and give him a show or let him quit.

Q. To wake him up?—A. Yes; show him that he can't market oil, and he will quit himself.

Q. You thought that was a method they had of discharging Farquharson?—A. Well, it is not discharging. If he could not learn how to market oil, why, he would have to quit.

Q. You thought that the Standard Oil Company was not resourceful enough to handle Mr. Farquharson in any other way than to send you down there with a bogus company, didn't you?—A. They did not send me down there with any bogus company.

Q. No, no; answer my question.—A. I can't tell you yes when they didn't.

Q. We will come to that pretty quick. They sent you down there with the Eureka Company?—A. They did not.

11360 Q. Didn't they?—A. No, sir. I went there just as an individual to learn the conditions.

Q. And then they sent you down there with the Eureka, didn't they?—A. They didn't send me. It was my own suggestion, what I learned from Mr. Fivel.

Q. Didn't they permit you to go down there?—A. After I suggested it to them they did.

Q. You went down there, didn't you, and you worked there, and they were paying you a salary while you were running the Eureka, weren't they?—A. Yes, sir.

Q. So you were the hired man of the Standard Oil Company in all that you did?—A. Yes, sir; it was the Standard Oil Company's business.

Q. Now, let us understand again. You don't know of any reason for your going to Norfolk except to wake up Mr. Farquharson?—A. I know another reason.

Q. Now, give us the other one.—A. The company used to tell Farquharson for the tank wagon to visit Portsmouth once a week is not sufficient, and it is not enough. After my investigation there I recommended the company to build up a plant in Portsmouth, Virginia, to put up a bulk station there. That never occurred to Mr. Farquharson as the thing to do, and by doing so, why, I proved that Mr. Farquharson didn't know his business.

Q. Did they send you down there for that purpose?—A. They sent me down to investigate conditions; yes, sir. That was part of the conditions.

11361 Q. Yes; but the trouble was with Farquharson, wasn't it?—A. The trouble was with the drivers and with the 20-gallon system.

Q. Those were both Farquharson's systems?—A. Yes.

Q. Then you went back and reported all these things that you learned, together with the suggestions that you had to make, to Mr. Powell, didn't you?—A. Yes, sir.

Q. What was the next step you took after that, after you made that report?—A. I went back to Norfolk and I bought Fivel out.

Q. When did you discover Fivel?—A. The second day I was in Norfolk; one day I was in Portsmouth.

Q. Fivel was selling a good deal of oil, wasn't he?—A. Oh, very little, not so much, about 200 or 250 gallons a day.

Q. It didn't amount to much, did it?—A. Oh, no; I done more than that after I pulled in there.

Q. What was his whole outfit worth?—A. I think it was worth what we paid for it.

Q. Well, what was it? Of what did it consist?—A. A small tank wagon.

Q. That was useless, wasn't it? You couldn't use it?—A. Oh, yes, I could. We repaired that wagon, painted it up in the Standard Oil Company's works in Canton and sent it back to Norfolk, and I used it. The only thing I could not use was his horse. I used the harness. He had several dozen 5-gallon cans, and the good will of the business.

Q. And the good will of the business?—A. Yes, sir.

11362 Q. That is, 250 gallons a day?—A. No, sir; about 200 or 225, yes.

Q. And you regarded the good will of a business of that kind as worth considerable, I suppose?—A. Well, the good will and the wagon always goes in the same price.

Q. Did you ever hear of Fivel before you got down there?—A. No, sir.

Q. You didn't know there was such a peddler there?—A. I did not.

Q. How did you find out that Fivel was there?—A. Fivel looked me up at the Norfolk Hotel.

Q. How did he find out you were there?—A. He heard from the trade during the day.

Q. From the trade during the day?—A. Not from my trade; from his trade. I canvassed and investigated, and he heard that Blaustein was here, and I was known in Norfolk, and I was also known that I was with the Standard Oil Company.

Q. How did you come to be known in Norfolk?—A. I used to be in the wholesale grocery business years ago, before I ever started in the oil business, and I used to travel to Norfolk selling groceries.

11363 Q. How did they know that you were connected with the Standard?—A. Norfolk and Baltimore are closely connected together. A good many people move away from Baltimore to Norfolk; that is, merchants who keep a store in Baltimore, to whom I sold oil, knew that I am with the Standard Oil Company.

Q. How many years before that was it that you were a traveling salesman and visited Baltimore?—A. I didn't understand that.

Q. I should have said Norfolk.

(The question was then read, as follows: "How many years before that was it that you were a traveling salesman and visited Norfolk?")

A. That was before I started with the Standard Oil Company. I worked on a commission for C. F. Habighurst & Company and sold groceries.

Q. What year was it? Give us the year.—A. It was in 1893 or 1894—the latter part of 1894. I traveled for H. Knefley & Son.

Q. Did they sell oils?—A. No, sir; but I sold, on commission, groceries for them; also on commission for C. F. Habighurst & Co.

Q. And did you sell oil?—A. Yes, sir; I believe I did sell some occasionally, a barrel of oil; it didn't amount to anything.

Q. That was an independent company you were selling for too, wasn't it?—A. I couldn't tell you. We used to buy from the Standard—many cars.

Q. Well, was it before or after you went to work for Nicolai that you visited Norfolk as a traveling salesman?—A. It was after; I was with Habighurst.

11364 Q. I thought you went from——A. From Nicolai to Habighurst, and from Habighurst to the Standard.

Q. So you think from that, that they knew you were connected with the Standard?—A. That is one reason. Another reason, the merchants of Baltimore, a good many of them, moved away to Norfolk to open up grocery stores there, and they knew me from Baltimore as being connected with the Standard Oil Company.

Q. Now let us get right to it. Did you tell them you were connected with the Standard Oil Company?—A. They knew it; no use to tell them.

Q. I am asking you whether you told them.—A. I wasn't talking to them on the oil question; I didn't try to sell them any oil at all; I wasn't talking on that subject. Why should I tell them?

Q. You were there investigating the oil business, weren't you?—A. I was there for the company, but I didn't have to tell them what I was there for.

Q. No, you didn't have to, and all I am asking you is whether you did.—A. They all knew it. They asked me, "Are you still with the Standard?" I told them yes.

Q. So that everybody down there understood you were with the Standard?—A. I don't mean to say everybody; I mean a good many of them.

Q. Nearly all the dealers you went to knew you were with the Standard, didn't they?—A. I couldn't tell you that, Mr. Morrison.

Q. You don't know?—A. No. A good many of them knew it.

Q. Give us the name now of one that is in business there
11365 yet.—A. Zeipler.

Q. Did he ask you anything about it?—A. He asked me, "Are you still with the Standard Oil Company?" I told him yes. Raymond—the two Raymonds there; they used to keep grocery stores in Baltimore and moved to Norfolk, and I used to know them when they kept store in Baltimore.

Q. Did you see any of Fivel's customers?—A. I just learned from those people that Fivel was selling them. I didn't know anything about Fivel before I have started in Norfolk.

Q. But you soon found out you had run on to some of Fivel's customers there?—A. I also came across Standard Oil Company's customers.

Q. And did you tell Fivel's customers that you were still representing the Standard?—A. Those are Fivel customers I mentioned to you just now.

Q. And Fivel's customers understood you were representing the Standard?—A. I didn't know that I was talking to the merchants that buy from Fivel. That is, when they told me I knew it, but before that I didn't know it.

Q. You didn't ask anybody? Did you tell anybody that you were thinking of going into business there in Norfolk?—A. No, sir.

Q. In the oil business?—A. No, sir.

Q. How did Fivel happen to come to you, then, to sell out his business to you, if he had not learned you wanted to go into business there?—A. Fivel was looking for a buyer and he knew I was
11366 with the Standard Oil Company. Now, whether he heard from the customers that I spoke to upon business there or not, I don't know, but he told me he did. Those are the statements of the people made to him, that I am not there for nothing, I must have come there with a purpose, to find out something. I have been talking to them about oil business, like the sugar business, or any other business.

Q. How long had you been in Norfolk before it got around to Fivel that you were there and you would probably go into business?—A. I was there a day.

Q. Was this the first night you were there?—A. The second night. The first night I was in Portsmouth.

Q. Well, I mean the first night that you were at Norfolk?—A. Yes, sir.

Q. He came over there?—A. Yes, sir.

Q. Now, do you know whether he was selling on a commission at that time or not?—A. I do not.

Q. Do you know whether, at the time you went to Norfolk, Fivel was buying anything of the Standard?—A. I didn't know there was any such thing as a man Fivel existed in Norfolk.

Q. Well, did you learn that he was buying anything from the Standard?—A. After Mr. Fivel told me that evening.

Q. What did he tell you?—A. He told me that he was buying part from the Seneca Oil Company.

Q. Part?—A. Well, the majority of his goods from the Seneca and occasionally from the Standard Oil Company; that is what he told me.

Q. Do you know what price he was paying the Standard at that time?—A. I do not.

11367 Q. Do you know what price he was paying the Seneca?—A. I do not.

Q. Do you know for what price he was selling it?—A. I can't remember that.

Q. Did you learn from him how long he had been buying of the Seneca Oil Works?—A. I did not.

Q. Where is Fivel now?—A. I don't know, sir.

Q. When did you last see him?—A. I heard last time he was in jail.

Q. When was that?—A. Years ago; five years ago.

Q. Well, you finally bought out his business there, didn't you?—A. Yes, sir.

Q. And that is what started the Eureka Oil Works, isn't it?—A. Yes, sir.

Q. I think you said that you got this name "Eureka" by passing along the street, and you looked up and you saw the name on some sign?—A. The Eureka harness oil; I have seen an advertisement.

Q. And you thought that would be a very nice name for your company?—A. Yes, sir.

Q. Well, did you know what the word Eureka meant?—A. No, sir.

Q. And you don't know now?—A. I don't think I know it now.

Q. You just simply looked up there and saw it?—A. Yes. It was advertised all over the fences there, on Church street and Princess Anne avenue.

Q. So you thought that was a good name?—A. Every post
11368 had a Eureka Harness Oil advertisement on it, and I thought it is as good a name as any other name.

Q. And you thought that would do just as well as any other name?—A. Yes, sir.

Q. Why didn't you take the name Standard Oil Company? That is a pretty good name.—A. Why I didn't take Standard Oil Company?

Q. Yes.—A. I took it at Fivel's suggestion to be a good idea to run this company under a different name, because the people over there, the merchants, have been prejudiced against the Standard Oil Company, and if I will start there under the Standard Oil Company I won't be able to do any business. He explained to me that a good many of those merchants have left the Standard Oil for the other oil, for the simple reason they don't have enough money to buy 20 gallons at a time, and when they come there with their wagon on Monday and they wouldn't come back until the next Monday they didn't like it. Therefore he thought it was a good idea for me to go in there as the Eureka Oil Company, although they all knew it was the Standard Oil Company.

Q. Yes, everybody knew it, and still it was a good idea to go in there under an alias; is that it?—A. Well, everybody knew it.

Q. Yes.—A. Yes.

Q. Now, if everybody knew it, will you tell me what good it did you to take an assumed name there?—A. Well, this was done to stir up the Standard Oil Company's man just as well, Mr. Farquharson.

Q. Oh, yes. Then, you took the name Eureka so as to stir
11369 up Farquharson?—A. Also to hold the trade in line.

Q. One of your reasons for taking the name Eureka was to stir up Farquharson?—A. One reason was to hold the trade in line.

Q. You have said that; but one of your reasons was to stir up Farquharson, wasn't it?—A. Yes, at that time.

Q. Now just answer my questions.

Mr. CRAWFORD. Let him answer the question.

Q. You answer the questions, and then on redirect, if you want to explain, you may do so. Now, didn't Mr. Farquharson know that the Eureka was a Standard Oil concern?—A. Farquharson?

Q. Yes.—A. Yes, he did.

Q. Then, how did you expect that to stir him up?—A. Well, it did stir him up a good deal too. He was sore. He used to write letters every day that I am taking all his trade away from him.

Q. Now, can you give any other reason for taking the name Eureka instead of taking the true name, Standard Oil Company?—A. Yes, sir.

Q. Now give us another?—A. I will. At that time I suggested to Mr. Powell about giving that name Eureka, the company hadn't changed Farquharson's methods yet; they hadn't taken the drivers off from the wagons and they still continued under the 20-gallon system, and I suggested to Mr. Powell that I did not know whether they are going to do away or not with this 20-gallon system, and if the company would have kept up with this 20-gallon system and these colored drivers, why I couldn't sell any oil, and there would be plenty of room perhaps for a competitor to come
11370 in and market oil in Norfolk, because the prejudice was great against the Standard Oil Company on account of Mr. Farquharson's marketing.

Q. Is that all?—A. Yes, sir.

Q. Now, that is an additional reason for taking the name Eureka?—A. Yes, sir.

Q. Well, if I understand you now, the gist of that is that you thought some other independent oil company might come in there if you didn't go under the name Eureka?—A. Well, Fivel told me; this is his suggestion.

Q. That suggestion met with your approval, didn't it?—A. It met with my approval after I learned the prejudice. I think it is a good idea.

Q. Yes, you thought it was a good idea to have it go under the name of Eureka. Now, if all the merchants there knew, or nearly all of them knew, that the Eureka was the Standard, how long do you think that would fool an independent company?—A. Well, I can't tell you.

Q. You can not tell?—A. No, sir.

Q. Did the people there or did the dealers know that the Eureka belonged to the Standard?—A. Yes, sir, a good many of them.

Q. It was pretty generally known, was it?—A. Yes, sir.

Q. So that you didn't accomplish anything after all by taking the name Eureka?—A. Oh, yes, I did.

Q. Whom did you fool by taking that name?—A. I didn't fool anybody.

Q. You did not?—A. No, sir.

11371 Q. Why did you take the name, then, if you didn't fool anybody?—A. I took it at Fivel's suggestion, and I thought Eureka is just as good as any other name.

Q. What did you need any other name for except the Standard Oil Company?—A. Because Mr. Powell wanted me to show them how to market oil. If he would put me there as Standard Oil Company, Mr. Farquharson would perhaps—well, you couldn't insult the man. Mr. Farquharson thought he had been with the company longer than Mr. Powell, and he thought he knew the business perhaps better than Mr. Powell, and Mr. Powell thought different. If he would send me there as Standard Oil Company I could not do any business; Farquharson wouldn't let me, but he can send me in under a different name.

Q. Yes; although Farquharson knew the name?—A. Oh, yes.

Q. Here is what I gather now from what you say: That Powell did not want to offend Farquharson by sending you there to sell under the name of the Standard Oil Company; so he sent you there to sell under the name of the Eureka?—A. He did not.

Q. Oh, wasn't that it?—A. After I suggested to him that Fivel wanted me to sell under the name Eureka. There was another reason why I started under Eureka.

Q. Now, just a minute and let us get through with this reason first.—A. All right, sir.

Q. If I gather correctly, the inference from your statement here, it is this: That Farquharson thought he had been there longer than Powell and that he knew more about it, and Powell did not

11372 think he knew more about it, but that he did not want to offend Farquharson or make any trouble for him, and for that reason, after you had made to him the suggestion which Fivel had made you, that then Mr. Powell directed you to go there and use the name Eureka?—A. Yes, sir.

Q. And one reason for that was that he did not want to offend Mr. Farquharson?—A. He wanted to find out what the true condition is.

Q. Well, we have got past that now. One reason that he had for falling in with your suggestion to send you down there under the name of the Eureka was so that it would not offend Mr. Farquharson?—A. I didn't mean to say to offend him, but I mean to say that Mr. Powell could not appoint any salesman or anybody else in Farquharson's district.

Q. What difference, will you tell me, sir, did it make whether or not the Standard Oil Company sent somebody there under the name of the Eureka to sell, or whether they sent him there under the name of the Standard, as long as Mr. Farquharson knew all about it?—A. Read his question to me, please.

(The question was read by the reporter.)

A. I don't think it made any difference at all.

Q. No. You can't see now that it made any difference?—A. No.

Q. Can you give us now (you started to a moment ago) another reason why they sent you down there under the name of the Eureka? I would like to have you give all the reasons that you can.—A. Yes, sir; I will accommodate you, Mr. Morrison.

Q. Yes, sir.—A. Mr. Farquharson did not want his customers to know that he sold direct to the Standard Oil Company. He remained there in Norfolk, and he thought perhaps the merchants,
11373 the customers to whom he sold, will think that he got a great big price for it, and he did not want them to know——

Mr. CAMPBELL. Do you mean Mr. Farquharson?

WITNESS. I mean Mr. Fivel. Mr. Fivel told me that he don't care to have the merchants in Norfolk to whom he sold oil know that he sold out to the Standard Oil Company, for different reasons. He don't want them to know the true story, that he didn't get much for it, and don't want them to know he may have got a great deal of money for it. Therefore, he also suggested to help him along by starting in under another name.

Q. Now, as I gather it, it was going to help Fivel along?—A. Also, yes, sir.

Q. And that was one of the reasons why you took the name Eureka?—A. Altogether, yes.

Q. Now, will you explain a little more definitely just how that was going to help Fivel? As I understand, Fivel had sold out everything to you?—A. I know, but just for the——

Q. And he had gone out of the business?—A. Just for the moral effect from his other trade. He didn't want the merchants, he didn't want his customers to know how much money he got for this business.

Q. Oh! And that is the reason you took the name Eureka?—A. That is the reason he told me to take the name Eureka.

Q. I see now. That is very clear to me. Now, Fivel had sold out the business?—A. Yes, sir.

Q. And had no interest whatever in it, and was not in the oil business, was he?—A. Not after he sold out.

Q. And he was simply helping you to get started in business
11374 there. I believe he was to stay with you thirty days?—A. Yes, sir.

Q. And that is all the interest he had, as I understand, in the business?—A. Yes, sir.

Q. And Fivel's customers, at least some of them, that you were selling to, knew perfectly well that you were the Standard Oil Company?—A. Some of them; yes, sir.

Q. Yes; they knew it. And still, just to help Fivel out of that perplexing situation, you took the name Eureka?—A. Yes, sir.

Q. Did Fivel ever go into the oil business after that?—A. Not that I know of.

Q. Did he spend the thirty days with you—serve out his time?—A. Yes, sir; he went there for some time with me.

Q. Went around with you to his customers?—A. Yes, sir.

Q. Did you go to all his customers, or did he go to all of them with you?—A. Well, I did not go. One week I went to all of them—about a week or so.

Q. Did he go with you?—A. Yes, sir.

Q. So that you met all of his customers?—A. I also met customers of——

Q. Just answer that question.—A. No, sir; he did not show me all of his customers.

Q. Did not show you all of them?—A. No, sir.

Q. Did Fivel go with you or did his driver go?—A. Fivel went with me.

Q. Fivel himself went?—A. Yes, sir.

11375 Q. Now, did you and Fivel happen to run on to any of these dealers down there that happened to know you represented the Standard?—A. Yes, sir.

Q. What did they say to you when they saw you coming in there under this other name?—A. They didn't say anything.

Q. Not a word?—A. Not while I was working with Fivel. We continued it as Fivel's business. We had no Eureka at all.

Q. Oh, you did not take the name of Eureka——A. No, sir.

Q. As long as Fivel was with you?—A. No, sir; because I had to send the wagon back to have it fixed and painted.

Q. Then it was to accommodate Fivel, after he had entirely gotten out of the business and after his thirty days were up with you, that you took the name Eureka?—A. Yes, sir.

Q. I misunderstood you.—A. Yes; about.

Q. I supposed that he wanted that name during the thirty days that he was helping you, but I am wrong about that, am I not?—A. Yes, sir.

Q. Now, can't you give some other reason? I gather from some of your answers that there were other reasons why you took the name Eureka?—A. No, sir.

Q. Now, let me ask you a question and see if it will suggest anything to you. Did you take the name Eureka because you did not want the trade to know that it was the Standard Oil Company's business? Now, just answer that yes or no, if you please.—A. Read the question to me again.

(The question was read by the reporter.)

A. I took it according to his suggestion to me.

Q. You are not answering my question, and I will ask the

11376 reporter to read it to you again.—A. All right, sir.

(The reporter again read the question.)

A. I took the name Eureka not for that purpose; no, sir.

Q. Now, your testimony is that you did not take that name because you thought you would conceal the fact thereby that it was the Standard Oil Company's business?—A. No, sir.

Q. Did you take it because you wanted the trade to know that it was the Standard Oil Company's business?—A. I took it to show Mr. Farquharson how to market oil.

Q. Well, you have given a whole lot of other reasons.—A. That is the reason I am giving you now.

Q. That is an additional reason, is it?—A. That is the main reason.

Mr. CRAWFORD. He stated that before.

Q. But that is the main reason? Was it necessary for you to take the name Eureka so as to show Mr. Farquharson how to market oil?—A. I suppose it was.

Q. What makes you suppose so?—A. Because I could not go there as the Standard Oil Company.

Q. Why not?—A. The company had no right to employ anybody in his field.

Q. They did not have?—A. No, sir; they never do that.

Q. Why not?—A. They always leave it to the special agent to do his own employing; they leave that in his own hands.

Q. Now, here is an additional reason; that the company had not power to employ anybody there in the name of the Standard Oil Company because it was in his (Farquharson's) territory.

Mr. CRAWFORD. He testified to that before.

11377 A. I did not mean the power. I mean they did not want to antagonize him; did not want to force him.

Q. So, instead of doing it in that way, directly and openly, they took the name Eureka, I suppose, to deceive somebody, didn't they?—A. Just to show Farquharson—not to deceive anybody; everybody knew it.

Q. Everybody knew it, and Farquharson knew it too, didn't he?—A. Yes, sir; he knew it too, and he knew that it was done just to shake him up, too.

Q. Well, did he know and did you know that this name Eureka was taken to deceive somebody?—A. No, sir.

Q. It was not taken for that purpose?—A. It was simply done to shake Farquharson up, and his drivers and his salesmen.

Q. I know; you have said that. It was not done to deceive anybody, was it?—A. Not to my knowledge.

Q. Well, you are the man that suggested it to Powell. You have as much knowledge about it as anybody, haven't you?—A. Well, I had no knowledge of deceiving anybody at the time I took the name Eureka.

Q. Now, why didn't you go there in the name of Blaustein?—A. When a man starts in the oil business under a company he generally does a better business. It looks like the business is larger.

Q. Oh, yes! Now, that was the reason why? You wanted something that would look big to the consumers, to the purchasers?—A. Well, to look big, and furthermore it was not my business. I don't believe the company would allow me to do business

11378 under my own name. It was not my business.

Q. It was not the Eureka's business either, was it?—A. That was the Standard Oil Company's business.

Q. And you are the Standard Oil Company's hired man?—A. Yes, sir.

Q. So that they might, if they had seen fit, have let you gone on in there and sold as Mr. L. Blaustein?—A. They might. If Fivel had not suggested that, they might have told me to do it.

Q. The reason you didn't do that is because Fivel did not suggest it?—A. Well, it is because they didn't think about it; because Fivel told me the Eureka would be a good name for it.

Q. I thought you looked up and saw the word Eureka?—A. I did, at the time I passed by the board.

Q. Then, it was not Fivel that made the suggestion to use the name Eureka?—A. He said to run it under a different name.

Q. And you walked along and picked up the name that was most before your eyes?—A. Yes, sir.

Q. Oh, I see. Can't you give us some other reason now——A. No, sir.

Q. ——for going under a nom de plume?—A. No, sir.

Q. You can't do that?—A. No, sir.

Q. You have exhausted yourself upon that subject, have you?—A. Well, I think you have also.

Q. How long did you continue to run under this alias here?—A. I don't understand it, Mr. Morrison.

Q. You don't know what that means, eh? Well, under a false name.—A. Do you mean how long I——

11379 Q. How long did you run the Eureka under that name?—A. You mean in Norfolk? I also ran it in other places.

Q. I will come to that.—A. All together?

Q. First, in Norfolk.—A. About a year and a half, I believe.

Q. How many wagons or horses or how much of an outfit did you have when you started in?—A. In Norfolk?

Q. Yes.—A. One.

Q. And did you increase that during the year?—A. No, sir, not in Norfolk.

Q. You didn't have but the one?—A. No, sir.

Q. Did you do anything during that year except solicit trade for that one wagon?—A. No, sir, I didn't solicit trade there after I got acquainted with the trade.

Q. How long did you stay there?—A. Oh, I have been coming there off and on.

Q. How long did you stay there and devote your time to the trade in Norfolk?—A. In the beginning I stayed there for a week, and then I used to stay there a couple of days; sometimes once a month, and sometimes oftener than that.

Q. Did you have the same driver during the entire time you were in Norfolk?—A. I believe I did.

Q. Did he increase his business any?—A. Yes, sir.

Q. He did?—A. He did.

Q. What is the name of this driver?—A. I can't remember that. I have forgotten it.

Q. Well, the Standard Oil Company had all the business there, hadn't they?—A. Yes, sir, they had some business there.

Q. Well, they had all the business?—A. Yes, sir.

11380 Q. Every bit?—A. Yes, sir.

Q. So that the Eureka was competing there with the Standard Oil Company, wasn't it?—A. Yes, sir.

Q. Both selling at the same price?—A. Yes, sir.

Q. And both owned by the same concern?—A. Yes, sir.

Q. Both managed by the same concern?—A. It was not managed by the same concern.

Q. I suppose there was very sharp competition between you and the Standard Oil Company down there?—A. Well, yes. Mr. Farquharson often used to write letters stating that I am taking all his business away from him.

Q. You were taking the business away from him?—A. Yes, sir.

Q. That is, you were taking it away from the Standard Oil Company and you were giving it to the Standard Oil Company?—A. That is right, sir.

Q. What percentage of the business that the Standard Oil Company had in Norfolk did you get during the year this company was running there?—A. I don't understand that question.

(The question was read to the witness by the reporter.)

WITNESS. I don't understand that now. I don't know what you mean.

Mr. MORRISON. Just read the question again. It seems to me it is plain, Mr. Blaustein.

Q. What I want to get at is, how much of the Standard Oil Company's business did you get during that year?—A. About 50 per cent.

Q. Got about half of it?—A. Half of it.

11381 Q. You gave them a hard run for their money, didn't you?—A. The Standard Oil Company?

Q. Yes.—A. Well, we sold some oil there.

Q. You got half their business away from them?—A. Yes, sir; because I wanted to reduce my marketing. If I sell little my marketing will be too high.

Q. And yet you handled it all with one wagon?—A. Yes, sir.

(An adjournment was here taken until the morning of Thursday, November 5, 1908, at 10.30 o'clock.)

11382 ROOM 515, CUSTOM-HOUSE,

New York City, Thursday, November 5, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of defendants, Mr. F. L. Crawford, Mr. Douglas Campbell.

LOUIS BLAUSTEIN, recalled, and his cross-examination resumed, as follows:

By Mr. MORRISON:

WITNESS. Mr. Morrison, I would like to correct myself in the last answer I gave there about 50 per cent of the business in Norfolk. I meant when I bought Fivel's business, his output was about 200 gallons a day, and I ran it up and I added 50 per cent from the Standard Oil Company's business to that wagon.

Mr. CRAWFORD. What do you mean by that—by adding 50 per cent.

WITNESS. I mean that I took 50 per cent business away from the Standard Oil Company's customers.

Mr. CRAWFORD. How much did you get altogether?

WITNESS. I sold about 400 gallons.

Mr. CRAWFORD. What you mean is that 50 per cent of the business which you finally had you had taken from the Standard Oil Company?

WITNESS. From the Standard Oil Company; yes, sir; that
11383 is what I meant.

Mr. CRAWFORD. You did not mean to say that you took away one-half of the Standard Oil Company's business?

WITNESS. No, sir.

Q. Well, you did say that in your direct examination, didn't you, and you said it again in your cross?—A. I meant different, Mr. Morrison. It was 50 per cent added to my wagon, or Fivel's.

Q. When did you discover that you had made this mistake?—A. Why, I thought about it after I left the court, that I have——

Q. Did you talk with anybody about it?—A. No, sir.

Q. Now, let us see. I suppose Crew-Levick and the Red "C" were selling some oil in barrels in Baltimore, weren't they, or in Norfolk, I mean?—A. No, sir.

Q. Not a barrel——A. Not a barrel.

Q. While the Eureka was there?—A. No, sir.

Q. You said yesterday, I believe, that you only stayed in Norfolk a short time yourself with Fivel. Is that right?—A. I stayed with Fivel almost a month.

Q. About a month?—A. Yes.

Q. Then what did you do?—A. Then I employed a driver.

Q. Whom did you employ?—A. Some driver. I don't remember his name.

Q. Who took care of the business while you were away—your driver?—A. My driver; yes. I used to come there every week for a day.

Q. You would get there every week?—A. About; yes.

11384 Q. To what town did you next go and start into business under the name of the Eureka?—A. Mr. Powell——

Q. No, no; answer my question.—A. I went to Durham, North Carolina.

Q. And you started there under the name of the Eureka?—A. I went there first to investigate; I did not start there——

Q. No; when you started there you started under the name of the Eureka, didn't you?—A. When I did, I started under the name of the Eureka.

Q. Then you ran the Eureka in two different places at the same time?—A. Yes, sir.

Q. How long did it continue to run in Norfolk?—A. Why, I don't remember the exact time.

Q. About how long?—A. About a year or a year and a half; I can't remember exactly.

Q. Then was it taken out of Norfolk?—A. After the company—

Q. Can't you answer my questions? I am simply asking you whether after a year or a year and a half it was taken out of Norfolk?—A. Yes, sir.

Q. Now, as I understand your direct testimony, you went to Durham——A. Yes, sir.

Q. Because your agent Mr. Griswold there was not making the territory surrounding the town of Norfolk, and he had colored drivers—or I mean Durham?—A. He did not have any colored drivers in Durham.

Q. What was the other fault in Durham?—A. Mr. Gris-
11385 wold only canvassed the trade where there were good roads, in Durham proper; but in the outskirts he would not go out there because the roads were bad.

Q. So you put the Eureka in there to get that trade?—A. I put the Eureka there to show Griswold that the trade could be gotten.

Q. To show whom?—A. Griswold.

Q. You just simply wanted to show him something?—A. That is right.

Q. Why didn't you direct Mr. Griswold to make that outside territory?—A. This is nothing for me to answer. I had nothing to do with Mr. Griswold.

Q. Why didn't you recommend Mr. Powell to do it, after you had gone there and found out what the trouble was?—A. I could not recommend anything to Mr. Powell. He was my superior officer.

Q. You told Mr. Powell, didn't you, that the trouble there was that he was not making the outside territory?—A. Yes, sir.

Q. Did you write him that or did you tell him that?—A. I told him.

Q. Did you tell him of any other trouble in Durham?—A. No, sir; that is about all.

Q. Who was supplying these customers that Mr. Griswold did not supply?—A. The Red "C" Oil Company.

Q. They were selling there. That is an independent company!—A. I don't know if they are or not. I can't tell you.

Q. You haven't any knowledge on that subject?—A. No, sir.

Q. Although you have been competing with them all these years, you don't know whether they are independent or not!—

11386 A. It is hard to tell who is independent and who is not. I can't tell you that.

Q. And you put on one team, did you, or——A. I have appointed C. C. Thomas & Company as commission men.

Q. How did Thomas sell—in barrels, or——A. In barrels.

Q. The Standard there were selling from tank wagons, weren't they?—A. Also in barrels.

Q. Where were they selling in barrels?—A. I can't tell you that.

Q. They were right in the town of Durham, weren't they?—A. Yes, sir.

Q. They were not selling to this outside trade in barrels?—A. I don't think they did.

Q. They made their deliveries in Durham from the tank wagons?—A. Yes, sir.

Q. To the grocers?—A. Yes, sir.

Q. And they had nearly all that trade, hadn't they?—A. They did not have all. They had about 75 per cent of it.

Q. You said, on your direct examination, 80. Do you want to jew that down a little?—A. About 80. I can't state exactly. I can't figure as close as that, 5 per cent of the Standard Oil Company's business.

Q. Your first impression was, in your first statement, on your direct, that they had about 80 per cent of the business at Durham?—A. About; yes.

Q. How did the Eureka deliver its barrel oil to these customers?—A. C. C. Thomas had trucks which he used to deliver his gro-
11387 ceries with, and he used to send a barrel of oil along on the truck.

Q. Did you talk with Mr. Griswold and ask him why he did not deliver the oil out here to these places?—A. No, sir.

Q. You did not ask him that?—A. Mr. Griswold got very sassy.

Q. No, no; just answer my question.—A. No.

Q. You did not ask him that question?—A. It was not up to me to ask him that question.

Q. I thought you were sent there to investigate conditions?—A. From the merchants; not to investigate Griswold personally.

Q. Not to go near Griswold. Well, did you go to Griswold? Did you talk to Griswold about it and tell him what you were there for?—A. No, sir; I did not.

Q. Did he know you were there making the investigation?—A. Yes, sir.

Q. Did Mr. Thomas, the man that you had running the Eureka there, deliver in any way except in barrels?—A. That is all he delivered.

Q. So that he did not reach the tank-wagon trade at all?—A. Well, the same merchants who handled—were handling oil—he sold his oil to.

Q. Oh, yes. Of course if they wanted it in barrels rather than in tank-wagon delivery, he was right there in Durham and would sell to them I suppose?—A. He did. He canvassed every store in town.

Q. Well, he got, I think you said, 75 per cent of the business in Durham.

Mr. CRAWFORD. Who?

Q. Thomas.—A. I beg your pardon. Thomas, in Durham proper?

11388 Q. Yes.—A. I never said that.

Q. Well, what did you refer to?—A. He got some of the Standard Oil Company's trade in Durham.

Q. What percentage of the trade did he get there?—A. I can't tell you that.

Q. Didn't you say 75 per cent?—A. I don't remember that.

Mr. CRAWFORD. What page are you referring to?

Q. What percentage of the business that had theretofore been done by the Standard Oil Company did Thomas get?—A. I never figured the percentage. All I figured is how much barrel oil he sold.

Q. Can you make an estimate of it now?—A. I can not.

Q. He did not succeed, did he, in running the Standard Oil Company out of there?—A. It was not a question of succeeding in running anybody out there. It was only a question of——

Q. Just answer the question I put to you—whether he succeeded or not. Just answer my question.

Mr. CRAWFORD. I object to the form of the question, because it implies that there was any attempt or intention to do that, and that has not been proved, and it is an improper question.

Mr. MORRISON. Just read the question to the witness.

(The reporter read Mr. Morrison's last question.)

A. The Standard Oil Company are still there.

Q. The Standard Oil Company is still at Norfolk?—A. Yes, sir.

Q. Did the people of Durham understand that the Eureka was a Standard concern?—A. Yes, sir.

11389 Q. Everybody knew that?—A. I could not say for everybody, but Griswold knew and advertised me.

Q. What?—A. The Standard Oil Company's agent went out and told everybody, as much as I can think, that I am sent there only for him to lose his job.

Q. And that made quite a disturbance between the Standard Oil Company and the agent, didn't it?—A. I can't tell you that.

Q. They discharged him pretty soon, didn't they, after he circulated that story around there?—A. No, sir; he has been there about six or seven or eight months.

Q. As soon as they could get around to adjust themselves, they got rid of Mr. Griswold, didn't they?—A. I could not tell you whether he quit or whether they got rid of him. I know he is gone.

Q. You know there was a fuss about it, don't you?—A. I don't know anything.

Q. You know there was a fuss in the hotel between you and Griswold, wasn't there?—A. I did not fuss. Griswold fussed with me.

Q. Oh, Griswold fussed?—A. That does not say that he fussed with the Standard Oil Company.

Q. You were about the nearest representative of the Standard Oil Company in the field, weren't you?—A. No, sir; Griswold was not working under me and I had nothing to do with him.

Q. No; but you were both working under the same man. A. Yes, sir.

11390 Q. Did you represent the Eureka to be independent of trusts down there in Durham?—A. I don't remember if I did.

Q. You don't remember?—A. And if I did——

Q. Have you got a pretty good memory?—A. It depends upon what subject and what length of time.

Q. Now, on this particular subject, is your memory good or poor?—A. My memory is pretty good, I think. Of course it has been a good while.

Q. But you don't remember whether you did or did not?—A. I may have told people that the Standard Oil Company, according to my view, my belief, is independent, which I believe now.

Mr. CRAWFORD. That what is independent?

WITNESS. The Standard Oil Company is the only independent oil company in this country.

Q. You think that is the only independent oil company in the country?—A. According to my belief.

Q. And that was your belief then?—A. Yes, sir.

Q. When you were in Durham, and when you said that you were representing an independent company, you meant that the Standard was independent?

Mr. CRAWFORD. He did not say that he was representing an independent company.

Mr. MORRISON. He said he may have done so.

Mr. CRAWFORD. No, he did not. You asked him whether he said that the Eureka was independent of trusts, and he said he may have said so, which is a very different proposition.

11391 Mr. MORRISON. Well now, shift that around to suit you.

Mr. CRAWFORD. We will shift it around so as to comply with the testimony.

Q. Now, let me put this question to you: Did you or did you not represent in Durham that the Eureka was an independent company?—A. I did not.

Q. Did you or did you not represent that the Eureka was independent of the trusts?—A. I did not.

Q. What did you represent?—A. I represented the Eureka Oil Company as the Standard Oil Company, but under a different management.

Q. You told the public that it was the Standard Oil Company?—A. Whoever asked me.

Q. Well, who asked you?—A. I can't remember that.

Q. Did anybody ask you?—A. Yes, I believe they did.

Q. Who was it?—A. Why, I can't remember that.

Q. Do you swear, sir, that you ever told the trade or anybody in the trade in Durham that the Eureka was run by the Standard Oil Company?—A. Well, I don't believe anybody ever asked me.

Q. No, answer my question. Did you ever tell anybody that?—A. I can answer only in my own way, how the question was asked and how I answered.

Q. No, no; did you ever tell anybody that, regardless of whether you were questioned or not?—A. I used to ask the merchant's opinion of his own.

Q. No, answer my question.—A. I don't remember that.

11392 Q. You don't remember that. Well, why didn't you go under the name of the Standard down there, if you were doing business for the Standard Oil Company?—A. For the simple reason that the Standard Oil Company had a branch there, and they could not put another Standard Oil Company in Durham.

Q. They could not have two branches there?—A. No, sir.

Q. Could not have one branch running the barrel business and another running the tank-wagon business?—A. No, sir; the same man got a commission on barrel and on tank wagon.

Q. So that it was an impossibility to run it under the name of the Standard, and that is the reason you ran it under the name of the Eureka?—A. I suppose it was.

Q. Yes.—A. The same company under different management.

Q. Didn't you say repeatedly, while you were there, that you were independent, that you were an independent company, and you were not connected with the Standard?—A. I never mentioned that I am an independent company, not connected with the Standard, to anybody.

Q. Weren't you frequently asked that very question by the trade?—A. Do you want to hear my answer to that.

Q. First answer the question: Weren't you frequently asked whether or not you were connected with the Standard?—A. Yes, sir.

Q. What did you say?—A. I asked him his opinion, "What do you think?" He says, "I know you are nothing but the Standard Oil Company." My answer was, "Well, I leave it to you, then. If you know it, it is no use for you to ask me."

11393 Q. You always said that?—A. Yes, sir.

Q. Whenever a man asked you the question——A. Yes, sir.

Q. ——whether you were connected with the Standard, you said "What do you think about it?"—A. Yes. I used to tell them, "You heard all about me."

Q. "What do you think about it?" you would say to them?—A. Yes.

Q. And then what would they say to you?—A. They know that I am nothing else but the Standard Oil.

Q. What would you say?—A. "Then what do you ask me for, if you know it?"

Q. You never told them right out?—A. Well, he knew it.

Q. Just answer my question. You did not tell them right out that you were connected with the Standard, did you?—A. It was not necessary. He knew it.

Q. Answer my question. Did you or didn't you? I have not asked you whether it was necessary.—A. No, sir, because he knew it.

Q. And that is the only reason you did not tell them, was because they knew it?—A. Yes, sir.

Q. If they already knew it, and put a straight, square question to you, why didn't you frankly say to them, "Yes, it is connected with the Standard Oil Company?"—A. There is no use for me to tell him that, when he tells me that he knows it.

Q. Your only reason for not telling them was because they already knew it?—A. That is right.

Q. If they already knew it, why did they ask you?—A. Just as a matter of conversation.

11394 Mr. CRAWFORD. If he knows. How does he know why they asked?

WITNESS. Well——

Mr. MORRISON. Well, he knows most anything.

Mr. CRAWFORD. I object to the question, because it can not possibly be within the witness' knowledge.

Q. Do you know why they asked you that question?—A. I can not tell the reason.

Q. And you never mistrusted, did you, why they were questioning you as to whether you were a part of the Standard?

Mr. CRAWFORD. I object to that as incompetent, and this witness can not be called upon to say what he mistrusted. That is not evidence.

Mr. MORRISON. Read the question.

(The reporter read the question.)

A. Oh, I thought everybody knew it.

Q. You thought it was known by everybody there?—A. About.

Q. Did you advertise it in the papers?—A. It was not necessary. They all knew it.

Q. Oh, answer my question. I have not asked you whether it was necessary. Did you advertise in the papers?—A. That I am the Standard Oil Company?

Q. That you were a part of the Standard Oil Company?—A. No, sir.

Q. Did you have any advertisement in the papers at all?—A. I did not; no, sir; not that I know of.

Q. Did you write any letters while you were at Durham?—A. I don't remember that.

11395 Q. Did you write any to Powell?—A. I don't remember that.

Q. Did you write any letters to anybody connected with the Standard?—A. It has been too long for me to remember.

Q. You don't remember anything about it?—A. No, sir.

Q. You did frequently correspond with the home office, didn't you?—A. I can't——

Q. During the period you were running these companies?—A. I can't remember that.

Q. You made reports to them, didn't you, of your sales?—A. Yes; I used to go over to Baltimore.

Q. Well, but you made written reports, didn't you?—A. I don't believe I did. I don't remember as to that.

Q. Your reports you think were all verbal?—A. I may have written reports. I don't know.

Q. Whom did you write to when you wrote a report?—A. To Mr. Powell, care of the Standard Oil Company.

Q. How is that?—A. To the Standard Oil Company for Mr. Powell.

Q. Did you ever write a letter directed to the Standard Oil Company——A. I can't say.

Q. While you were out operating these various companies?—A. I can't remember that.

Q. No; you can't remember. Well, don't you know that you didn't?—A. I do not.

Q. Don't you know that you wrote always to one or the other of the officers of that company, and never to the company?—A. I don't remember that.

Q. Did you ever get a letter written on the Standard Oil Company's letter heads while you were with the Eureka, oper-
11396 ating that, or with the Eagle, or any of these other companies?—A. Yes, sir.

Q. Have you got any of them with you?—A. I have not. I never thought I will have any reason to keep it.

Q. Did you have any stationery for the Eureka, that the name "Eureka" was printed on?—A. I believe I did.

Q. Did that show it was part of the Standard Oil Company?—A. It showed "Eureka Oil Company."

Q. Can you give any reason why Powell did not direct Mr. Griswold to supply this trade that the Eureka afterwards supplied?—A. I can not.

Q. Did Mr. Powell ever give you any reason why he did not tell him to do it?—A. Yes, sir; he told me Mr. Griswold would not—Mr. Farquharson, rather, told him that Mr. Griswold claimed he can't reach there with the tank wagons.

Q. You knew that he could, didn't you?—A. After I went there I thought yes, he could.

Q. Why, you could see—anybody could see that he could reach them if he wanted to, couldn't he?—A. Not with two horses, he could not. He could put on more horses.

Q. Yes; he could put on more horses and reach them?—A. Yes, sir.

Q. Did Mr. Powell ever tell you why he did not direct Griswold to go on and do that business?—A. I can't tell you as to that. I don't remember that.

Q. They were paying you $150 a month, weren't they, for your services?—A. Yes, sir.

Q. While you were at Durham?—A. Yes, sir.

Q. It would have been cheaper, wouldn't it, to have had
11397 Mr. Griswold do that same business?—A. It was up to the Standard Oil Company to judge, not for me.

Q. I am asking whether it was or not?—A. I can't tell you that.

Mr. CRAWFORD. If he knows.

Mr. MORRISON. I assume that he has ordinary intelligence.

Mr. CRAWFORD. Then you do not need to ask him the question.

Q. You do know, don't you, that it would have been?—A. I do not know.

Q. You don't know? Did you make reports of your sales while you were at Durham?—A. Yes, sir.

Q. How often did you make those reports?—A. As often as possible.

Q. Didn't you have any regular time?—A. No, sir.

Q. Did you report the gallonage?—A. I don't remember as to that. I suppose I did.

Q. Did you have regular stated times—once a day or once a week—for making those reports?—A. I don't remember that. As often as I could. Sometimes once a week, sometimes once in two weeks.

Q. How long did you stay in Durham?—A. About a year or a year and a half, something like that.

Q. Were you there all the time?—A. No, sir.

Q. When did you commence in Durham?—A. At the beginning of 1898.

Q. How much of the time were you in Durham?—A. Oh, I was there in the beginning for a couple of weeks or three weeks.
11398 Q. Then were you there off and on afterward?—A. I have used to come there about once in three weeks for a day.

Q. You were overseeing the business yourself?—A. Yes, sir.

Q. You would go there and consult with your agent there, Mr. Thomas, I suppose, look over and see how the business was going along. Is that right?—A. I have to go through—I used to travel through Durham. I used to stop off just sometimes to wait for a train.

Q. The business was run under your management, wasn't it?—A. No, sir; Mr. Thomas was a commission man and he ran the business.

Q. What were you doing when you were not at Durham and not at Norfolk, during the year and a half that the Eureka ran at Durham?—A. I was home a good many times.

Q. Do you mean you were not working?—A. Well, I was not working all the time, no. I was sick for a while.

Q. How long were you sick during that time?—A. Oh, off and on for about four or five months.

Q. Were you selling oil on the road during the time that the Eureka was running at Durham?—A. What road do you mean?

Q. Oh, any road that you happened to be on. You know what I mean?—A. No, sir—what neighborhood?

Q. What is it?—A. Whereabouts?

Q. Anywhere.—A. I did not work anywhere except Durham and Norfolk at that time.

Q. What were you doing when you were not at Durham, during the time the Eureka was running there?—A. I was in Norfolk.

11399 Q. Then, did you spend your entire time between Norfolk and Durham?

Mr. CRAWFORD. He has not testified as to other parts of his time.

A. I was in Baltimore.

Q. What were you doing in Baltimore?—A. Oh, I just came there Fridays and stayed until about Tuesday.

Q. Were you working while you were in Baltimore, Saturdays and Mondays?—A. I used to keep my records in the company's office and go over the books.

Q. That is what I am trying to get at. Then you were part of the time in the Baltimore office?—A. Yes, sir.

Q. When you were not in the Baltimore office, when you were not at Norfolk or at Durham, where were you during the period that the Eureka was running at Durham?—A. I can't remember that.

Q. Did you have any other business than to look after the Eureka at those two places?—A. I don't remember that.

Q. Were you running any other companies during that period?—A. No, sir.

Q. Where was your office in Baltimore?—A. The Standard Oil Company's office.

Q. What department?—A. Refined oil department.

Q. Mr. Powell was at the head of that office, wasn't he?—A. Yes, sir.

Q. The Eureka did not have any office there, did it, outside of the Standard Oil Company's Office?—A. No, sir; it was not necessary.

11400 Q. I have not asked you whether it was necessary. Just answer my question. Didn't you go from Durham to some other town, shortly after you started in at Durham, and start up the Eureka?—A. I don't remember that. If you will mention the—

Q. What was the next place you went to after you left Durham?—A. To Burlington.

Q. How long was that after you started in at Durham?—A. About two or three months, or four months.

Q. What did you go to Burlington for?—A. Mr. Powell sent me there to investigate the conditions over in Burlington.

Q. One of the troubles there was that your agent there would get drunk and not attend to business. Wasn't that it?—A. Yes, sir.

Q. What else was the trouble at Burlington?—A. He neglected his customers.

Q. Yes, neglected them. What did you do to right up that situation there?—A. I have appointed a commission man by the name of Williamson & Brothers.

Q. Did the Red "C" Oil Company have any agency there?—A. I believe they had.

Q. They were competing with you there, weren't they?—A. I don't understand you by your word of "competing."

Q. You don't know what it means to compete?—A. No, sir.

Q. Never learned that in all your——

Mr. CRAWFORD. He does not know what you mean by that.

A. I don't know what you mean by the word competing.

Q. You don't know what the word competing means?—A. Yes, sir, I know what the word competing is.

11401 Q. Then when I ask you whether this Red "C" Oil Company was competing with the Standard there, don't you know what I mean?—A. No, sir; I do not.

Q. You don't know. What was the Red "C" doing in Burlington?—A. They were selling barrel oil to the customers whom the Standard Oil Company's man used to neglect in his service.

Q. They only sold to those, I assume from your answer, that the Standard Oil Company's man neglected?—A. Yes, sir.

Q. If he did not neglect them, why he sold to everybody, didn't he?—A. I can't tell you that.

Q. The only reason, as you understand it, why the Red "C" was disposing of any oil in Burlington was that the Burlington people were neglected by the Standard Oil Company's man. Is that right?—A. I can't tell you the Red "C" Oil Company's reason.

Q. Why didn't you discharge this man for drunkenness, and put somebody else in there that would attend to business?—A. I was not in the power to discharge him.

Q. Why didn't you advise Mr. Powell to do that?—A. I never advised my superior officer how to run his business.

Q. Did Mr. Powell say anything to you about why he did not discharge this man and put a sober man in there?—A. Mr. Powell perhaps did not know that the——

Q. No, I am asking you whether he said anything to you.—A. What time—when do you mean? Before I went there or after?

Q. No, after you went there and reported to Mr. Powell.—A. He told me he is going to discharge him.

11402 Q. Did he discharge him?—A. Yes, sir.

Q. How long after that before he discharged him?—A. I can't tell you that.

Q. About how long?—A. I am not in a position to tell you.

Q. What did you do before he discharged him, to right up the conditions there? Did you start selling any?—A. Mr. Williamson sold the oil there.

Q. Under what name?—A. "Williamson Brothers" was the barrels stenciled, in their own name.

Q. They were sent there by the Standard Oil Company?—A. Yes, sir.

Q. Who stenciled those barrels?—A. I believe Mr. Williamson stenciled them himself. They sent them in blank heads.

Q. You sent them in blank-headed barrels?—A. Yes.

Q. Who sent the stencil?—A. The Standard Oil Company from Baltimore.

Q. The Standard Oil Company sent stencils down there to print Williamson Brothers name on the barrels?—A. Yes, sir; that was Williamson's request.

Q. Now, just answer my questions. Did you tell Mr. Powell that that was what the Williamson Brothers wanted?—A. Yes, sir.

Q. So he sent them down there. You did not go under the name of Eureka there, did you?—A. Yes, sir; it was "Eureka Oil" on the barrels.

Q. What did you use the name "Eureka" and "Williamson Brothers" both for?—A. Mr. Williamson wanted to advertise his name. He was a new beginner in the grocery business.

11403 Q. Then you had the word Eureka stamped there on the barrels?—A. Yes, sir.

Q. So that is another place where you were running the Eureka at the same time you were running it at Durham and at Norfolk?—A. Yes, sir.

Q. Where was the Eureka name stenciled on these barrels—at Burlington or at Baltimore?—A. I don't remember that.

Q. Were the stencils sent to Williamson Brothers to stamp on the barrel "Eureka Oil Works?"—A. I don't remember that.

Q. Were Crew-Levick & Company selling in barrels in Burlington?—A. No, sir.

Q. Was the Red "C" Oil Company selling in barrels in Burlington?—A. Yes, sir.

Q. How was the Standard making its deliveries in Burlington?—A. Both barrels and tank wagon.

Q. They had a tank-wagon service there?—A. Yes, sir.

Q. The Red "C" did not have any tank-wagon service in Burlington, did they?—A. No, sir.

Q. How large a place is Burlington?—A. A small place.

Q. Well, that is very indefinite—about how large?—A. I can't tell you.

Q. Oh, you must have some idea about it.—A. I have no idea at all. I was there about twice or three times in my life.

Q. Is it a place of 10,000 people?—A. It may have been 10,000 and it may have been 6,000.

Q. Quite a good-sized town?—A. I never went through the town.

Q. How many times were you there?—A. Oh, about three or four times.

11404 Q. Did you appoint the Williamsons?—A. I did.

Q. Under the directions of Mr. Powell?—A. Yes, sir.

Q. Did they hold the Eureka out to be an independent company?—A. I could not tell you what they did.

Q. Did you go around to see the trade there?—A. I believe I have seen three or four customers, or half a dozen, maybe.

Q. During the time now that they were selling there under the name of the Eureka, your agent was also selling there, delivering from tank wagons, wasn't he?—A. When he was sober.

Q. Well, he attended entirely to the tank wagon business, didn't he?—A. Also barrel trade.

Q. But he attended entirely to the tank wagon business, did he not?—A. He did not.

Q. How is that?—A. He did not.

Q. Well, who did?—A. He attended to the barrel trade.

Q. How is that?—A. He had charge of the Burlington station, and he delivered from the tank wagon and also from barrels.

Q. Did anybody deliver in tank wagons there except your agent?—A. That is all.

Q. That is what I am getting at. What was his name?—A. Plummer.

Q. After the Williamsons started there, as well as before, he sold in barrels, did he?—A. Williamson only in barrels.

Q. No, no, but your Plummer. Did Plummer sell in barrels after Williamson started?—A. I could not tell you that.

Q. You don't know about that?—A. No, sir.

Q. Were there any suburbs around Burlington that were reached by barrel deliveries?—A. I can't tell you that. Williamson

11405 himself attended to that business.

Q. How long did Williamson run the Eureka at Burlington?—A. I can't remember the exact time.

Q. About how long?—A. About a year, or eight months, something like that.

Q. After you got the Eureka started up at Burlington, where did you next go and start it up? There is one question before that I want to ask. You said Plummer was finally laid off?—A. I believe he was, yes, sir.

Q. Who took his place?—A. I could not tell you that.

Q. The Williamsons took it, didn't they?—A. No, sir.

Q. So that you kept the two companies running there right along, Williamson representing the Eureka and somebody else representing the Standard?—A. Yes, sir.

Q. And they never coalesced?—A. They never done what?

Q. Coalesced.—A. I don't know what that means.

Q. All right. Where did you next start up the Eureka?—A. I did not start the Eureka after that. I went to Baltimore, and Mr. Powell——

Q. No, I am not asking you that.—A. All right.

Q. You have answered the question.—A. I did not start the Eureka after that.

Q. You have given us the names of all the towns and places then in which the Eureka did business, have you?—A. I believe that is all.

Q. And they were Norfolk, Durham, and Burlington?—A. Also sold some oil in Suffolk. I gave you that on my direct testimony.

11406 Q. Yes; but you did not have a regular agency there?—A. No, sir; sold them direct.

Q. Has the Standard Oil Company a brand of oil called "Carnadine?"—A. I don't remember that no more.

Q. They have a brand of red oil, haven't they?—A. I think they have, but I don't know the name.

Q. How long have they had that brand of oil?—A. I could not tell you that.

Q. Did you ever hear the name?—A. I could not tell you that I did. I have forgotten.

Q. Did you ever sell the red oil?—A. I sold red oil; yes, sir.

Q. Where did you sell it?—A. In Durham and in Burlington.

Q. In Norfolk?—A. No, sir.

Q. Didn't you know what brand you were selling when you were selling that red oil?—A. I did not sell red oil direct. I sold white oil, and I sold the coloring matter for the people to color it.

Q. Didn't you receive oil there at Durham, South Carolina, that was colored before it got there?—A. That was after I established myself in Durham, after five or six months.

Q. Then you were selling it. What was the name of that brand?—A. I don't remember that.

Q. Did you sell that for more or less than you did the same of white oil?—A. I believe one-half cent more.

Q. One-half cent more?—A. Something like that.

Q. Was that because it was a better oil?—A. No, sir; that is the expense of coloring.

Q. That was for the coloring?—A. Yes, sir.

11407 Q. And the Red "C" Oil Company did the same thing, did they not?—A. What do you mean by the same thing?

Q. Sold a red oil.—A. Yes, sir; at a very fancy price.

Q. How is that?—A. At a very high price.

Q. Will you swear that they ever sold red oil for more than one-half cent a gallon more than they were selling the same grade of white oil for at the same time?—A. I will.

Q. To whom?—A. I can't——

Q. Now, give us the name of somebody.—A. I can't remember those names.

Q. Oh, well, you——A. All through Durham and the vicinity of Durham, but I can't remember any names.

Q. Can you give any date? Can you give us any information by which we can look this up?—A. I can not. If I ever thought I would have an occasion to do it, I would have kept a memorandum book for you.

Q. You can't possibly think of a single man's name that they ever sold to?—A. No, sir; I can't.

Q. Will you give us the name of a Red "C" customer at Durham during the time that you say they were selling the Red "C" oil for a much higher price than they were selling the white oil?—A. I give you one man's name by the name of Jordan.

Q. Jordan.—A. I remember that.

Q. Jordan was the man that you afterward made your agent, wasn't he?—A. No, sir; sold him the oil and sold him the coloring matter, and he tried it and convinced himself.

Q. Jordan is one of the men that you think paid a high, fancy price, did he?—A. Yes, sir; I think so.

11408 Q. How is that?—A. Yes, sir.

Q. Can you give us the names of any others besides Jordan?—A. I can not. I don't remember that.

Q. You don't know what Jordan paid for it, do you?—A. Yes, sir; I have seen his bills.

Q. Did the Red "C" have a good many customers there at that time, at Durham?—A. Read his question again to me, please.

(The reporter read the question.)

A. I didn't count them. They had some customers.

Q. They had about 20 per cent of the trade, didn't they?—A. I can't tell you the percentage; I don't know.

Q. You testified that the Standard had about 80 per cent and they had the rest?—A. That was in Durham proper.

Q. Yes. Well, they had a good deal more—a greater percentage of the trade outside, didn't they?—A. Outside of Durham, yes, sir.

Q. Can you give us the names of some of their customers?—A. I can not.

Q. Now, as I understand you, at all of these places where this red oil was sold by the Red "C" Oil Company, the complaint was that the Red "C" had represented that this red oil was a natural product, that it came out of the ground red, when as a matter of fact it was a colored product?—A. Yes, sir.

Q. That was the complaint that the customers made, wasn't it?—A. The customer did not complain that.

Q. Didn't you say on your direct examination that that is the way you got the trade——A. That is the claim.

Q. Wait a minute—that that is the way you got the trade?

11409 Mr. CRAWFORD. He did not say anything about complaint at all.

Q. That that is the way you got the trade, by showing that this red oil was not naturally red, but had been colored red?—A. Yes,

sir; but that is what the customer claimed, and not complained. You said "complained." I said that was their claim.

Q. Oh, that was their claim?—A. Yes.

Q. Then you make a distinction between their claim and their complaint?—A. "Complaint" is distinguished as a different word.

Q. Then, as I understand you, they did not complain because this was a colored product rather than a natural product, did they?—A. Why, they did not know any different. They did not know how to complain. They thought it was really a fact.

Q. When you explained that it was not a fact, then were they dissatisfied?—A. Well, after a few times explaining to them, some of them tried it.

Q. How is that?—A. Some of them have tried it.

Q. I know, but were they dissatisfied with the Red "C" after you explained to them that this red oil was not a natural product, but a colored product?—A. I can't tell you that.

Q. Did you get any trade away from the Red "C" by explaining to them that this was not a natural product?—A. Naturally I did.

Q. You did get some?—A. Yes.

Q. The customers did not complain that it was not a good oil, did they—that it did not give light as it should give?—A. Whose oil do you mean—mine or the Red "C?"

Q. No, the Red "C" oil.—A. I don't think they did; no,

11410 they did not——

Q. Then the only thing that they complained of or were dissatisfied with was that this was an artificial rather than a natural product?—A. They did not complain, as I stated before.

Q. But was not that the ground upon which you got the business?

Mr. CRAWFORD. He has not so stated.

Mr. MORRISON. Well, I am asking him if it is not to see whether he will state that.

WITNESS. The customers did not know any different. They did not complain.

Q. I mean after you explained it to them.—A. Then they said, "I will try it."

Q. Is not that the way you got the business away from the Red "C," or some business away from them, by explaining to them that this was an artificial and not a natural product?—A. Yes, sir.

Q. What difference did it make to the customer whether it was natural or artificial? Can you explain that?—A. I can't tell you that.

Q. You can't see any difference, can you?—A. Well, the consumer probably bought the oil cheaper.

Q. Now we will come to that pretty quick. You can't see that it would make any difference whether that oil was colored after it went out of the ground or whether it was colored before it went out of the ground, can you, if it burned just as well, and looked just as well?—

A. I could see a difference in the price.

11411 Q. Oh, yes, I am not talking about the price.

Mr. CRAWFORD. Well, that has everything to do with it.

Q. I am coming to that. Will you answer my question? Is there any difference, sir, to the consumer, if it looks as well, between an oil that is colored before it comes out of the ground and one that is colored after it comes out of the ground?

Mr. CRAWFORD. I object to that question because it is trying to make this witness divide his explanation into two parts. The explanation is as a whole, and he has given the explanation fully in his direct examination. This is only an attempt to make him subdivide it. I admit that it is incompetent, irrelevant, and unfair.

Mr. MORRISON. Well, that is a startling admission on your part. Now please read the question to the witness.

(The reporter read the question.)

A. The only difference is in the price.

Q. Now we will get up to the price question. What the customers complained of then was that the Red "C" charged too much for this red oil?—A. After they have learned, by them coloring it themselves, yes.

Q. And that is the way you got the trade, is it?—A. Yes, sir.

Q. And the only places where you were able to use that argument would be places where the Red "C" was selling this red oil considerably higher than it was selling its white oil for, which was of the same grade or quality?—A. Yes, sir.

Q. That was all. Now, you have told about one man in Durham where they charged this fancy price, or where you think they
11412 did. That was Mr. Jordan. Where else in all the territory that you covered was there a man——A. Burlington.

Q. Give us the name now of a man to whom they charged a fancy price as you call it.—A. I can't give you.

Q. You can't give us a man, a firm, a woman, or anybody?—A. Mr. Metzel himself admits on the examination that their prices were higher by 2 or 3 cents a gallon.

Q. Oh, no, Mr. Metzel says nothing of the kind.—A. Well, you read it.

Q. I have read it, and I examined Mr. Metzel.—A. I have read it too.

Q. Is that what you are basing your testimony on?—A. No, sir.

Mr. CRAWFORD. Other witnesses have testified to the same thing. Other witnesses have testified to the same misrepresentation.

Mr. MORRISON. Not another witness has testified to it.

Mr. CRAWFORD. Pardon me, Mr. Waters testified to that, to having heard Mr. Metzel say this very same thing to a customer.

Q. Are you basing your testimony now on Mr. Metzel's testimony?—A. No, sir; I am basing just what occurred while I am traveling through the country.

Q. Are you basing it upon what Mr. Waters or anybody else said?—A. No, sir.

Q. You are basing it upon your own personal experience, aren't you?—A. Yes, sir.

Q. Now, can you give us the name of anybody? I will ask you again.—A. As I told you before I can't remember.

Q. You can't remember?—A. I have been away from there
11413 for so many years.

Q. This was seven or eight years ago, wasn't it——A. Yes, sir.

Q. Or more?—A. I never had any reason to believe it will be necessary to remember it.

Q. Now in what territory was the Red "C" selling this red oil at what you call a fancy price?—A. Durham, Burlington, also the Valley of Virginia.

Q. The Valley of Virginia covers quite a territory, doesn't it?—A. Harrisonburg, Mount Jackson.

Q. Anything else?—A. Edinburg, I believe, and a good many other points I have not been.

Q. Yes, a good many other points. You have told all the points where you have been, have you?—A. Yes, sir.

Q. And yet you can't tell a man that paid this fancy price you are talking about?—A. I can't remember that.

Mr. CRAWFORD. He has given you one.

Q. How is it you are able to swear, if you can't remember the time and place and the customer, that they did charge a fancy price for this red oil?—A. I do remember. I have seen bills of the Red "C" Oil Company charging those fancy prices.

Mr. CAMPBELL. Did you know the man's name at the time?

WITNESS. Know the names of what?

Mr. CAMPBELL. You knew the names at the time?

WITNESS. Oh, yes.

Q. You have seen bills, have you?—A. Yes, sir.

Q. Where?—A. At different places.

Q. Oh, pin this down to some——A. Harrisonburg, Durham, Burlington.

11414 Q. Give us the name of the man?—A. I can't remember that.

Q. The name of the concern? Can't remember it?—A. I can't remember that.

Q. How much business did you get away from the Red "C" by this exposure of yours?—A. I can't tell you for that.

Q. Haven't you any idea?—A. I don't know how much I took away from them. I know about how much I did.

Q. Well, you circulated the report pretty industriously, didn't you, that this was not a natural product, but a colored product?—A. I don't mean by circulating—what do you mean by that?

Q. If you don't know, we will go on and ask you something that you can understand. Don't you understand what I mean?—A. No, sir.

Q. Now, you speak about seeing bills. Do you remember the price that they charged for the red oil, as shown by any bill that you saw?—A. Yes, sir.

Q. Now, give us the price.—A. From 18 to 22 cents.

Q. Oh, not "from." Give us the name of some bill.—A. I can not. I don't remember that.

Mr. CRAWFORD. He has given you the range.

Q. You remember now that it was from 18 to 22 cents?—A. Yes.

Q. Can you give what that was, what was shown on any specific bill?—A. It called for one barrel, or two barrels, or five, Red "C" red oil, at a certain price.

Q. Well, was it one, two, three, or five, now? Which was it?—A. I can't remember that. They used to sell in one to five barrel lots.

Q. Did the billhead state whether it was a natural product or not?—A. No, sir, I have not seen that.

11415 Q. You did not intend to testify, then, in your direct examination, that the bills themselves stated that this Red "C" oil was a natural product?—A. I don't believe I ever testified to that.

Mr. CRAWFORD. Where are you reading from?

Mr. MORRISON. Page 11245. The sentence is not clear. I want him to clear it up.

Mr. CRAWFORD. "By me trying, by investigating, they used to show me their bills," etc.?

Mr. MORRISON. Yes.

Mr. CRAWFORD. It does not say the bills stated; it says the customers.

Mr. CHASE. Read the whole sentence.

Mr. CRAWFORD. Of course it means the customers stated. Read him the testimony and ask him what it means.

Mr. MORRISON. He says now, as I understand him, that he did not intend to say by the answer he gave that the bill showed it was a natural product.

WITNESS. I have never seen a bill showing it to be a natural product.

Q. What do you mean by your answer to this question: "Q. What was the consequence upon your trade of this exposure of the Red 'C' Oil Company's representations?—A. Well, we have done a right smart amount of business there." That was speaking of Durham. What do you mean by that?—A. I mean that we exposed their trick, where the Red "C" have been telling the people, and they bought some oil from us, as good oil for less money.

11416 Q. Well, the trick that you exposed was that they were representing it to be a natural product?—A. And also charging fancy prices for it.

Q. Because it was a natural product?—A. What?

Q. Because it was, as they claimed, a natural product?—A. Because they thought—they were told—it was a natural product.

Q. And in that way you did a right smart amount of business?—A. Yes; we done our share.

Q. You told them, didn't you, that the Red "C" man had been overcharging them all these years and had been gouging them?—A. I believe I did.

Mr. CRAWFORD. That was true, wasn't it?

WITNESS. That was the truth.

Q. Now, just wait. You have explained why you say that is true, I suppose. Now, you think, do you, that the dealers in Durham were willing to pay a fancy price, several cents above the price of white oil, for this colored oil, because it was a natural and not an artificial product?—A. It is not what I think; it is what I have done.

Q. Answer my question.—A. I have answered it.

(The question was read, as follows: "Now, you think, do you, that the dealers in Durham were willing to pay a fancy price, several cents above the price of white oil, for this colored oil, because it was a natural and not an artificial product?")

Mr. CRAWFORD. I object to it as immaterial what this witness thinks. That has nothing to do with it. The question is, What was the fact?

Q. What is your answer to that?—A. My answer was that they have paid fancy prices for the statements they made.

11417 Q. And the reason they paid those fancy prices was because they represented that it was a natural and not a colored product; that is the reason?—A. I believe it was.

Q. That is the only reason?—A. Yes, sir.

Q. That you know of?—A. That I know of.

Q. Then, you think they would not have paid that fancy price if they had known it was an artificial product?—A. I don't believe they would.

Q. What difference does it make whether it is a natural or an artificial product, if it burns as well or looks as well?—A. Oh, it does make a great deal of difference. It is taking advantage of the poor people that were using the oil.

Q. Didn't the white oil that the Red "C" Oil Company was selling in Durham sell for more than the white oil that the Standard was selling there?—A. It sold very little white oil there.

Q. Answer my question.

Mr. CRAWFORD. If he knows.

A. I don't know it. I have not seen any. They sold a little of it.

Mr. MORRISON. Counsel need not interject to help the witness out.

Q. Just answer my question. Were not the Red "C" Oil Company at this very time selling their white oil for a higher price in Durham than the Standard Oil Company was selling its oil?—A. I don't believe they did; I don't remember.

Q. They were selling the White "C" brand there, weren't they?—A. I can't tell what brand they sold.

Q. Didn't you investigate as to what brand they were sell-
11418 ing?—A. They sold red oil mostly from the refinery. I have seen very little white oil. Therefore I don't know the brand.

Q. Don't you know the brand known as the White "C"?—A. I have heard of the brand.

Q. You are familiar with that?—A. I have heard of the brand.

Q. It is regarded as a high-grade oil, isn't it, and is sold for a high price?—A. It all depends on who it is regarded by. It is not regarded so by me.

Q. Do you know anything about it?—A. Just as good as any other oil that the Standard Oil Company is selling.

Q. How do you know?—A. I tested it; burned it in lamps.

Q. So you know all about this White "C," then?—A. As I told you, I have heard it, yes; but didn't test it in Durham. I didn't come across very much white oil there.

Q. The Red "C" claims it is a high-grade oil and they sell it at a high price, do they not?—A. I could not say.

Q. You don't know?—A. I can't tell you what they claim.

Q. The Standard has some fancy brands of oil, hasn't it, that it sells at a high price?—A. I don't know of any.

Q. You don't know of any? They sell all their oil for the same price?—A. They have got a difference between Water White and Prime White.

Q. They have only got two brands?—A. As far as I know.

Q. Did you ever hear of the brand called Pratt's Astral?—A. I believe I did, but I have never handled that.

Q. Did you ever hear of Eocene?—A. No, sir; never heard of that name.

Q. Did you ever hear of Elaine?—A. No, sir; never heard of it.

11419 Q. You handled, then, only their cheapest oils?

Mr. CRAWFORD. He has not said so.

Mr. MORRISON. I am asking him the question, and I am not asking you, Mr. Crawford. You persistently interrupt here to help this witness.

Mr. CRAWFORD. You are persistently misrepresenting this witness' testimony.

A. I have heard of Pratt's Astral oil and Aladdin oil.

Q. The Aladdin oil is a cheap grade, isn't it?—A. You may think so. I don't.

Q. Don't you know that the Standard sells Pratt's Astral and the Eocene both for more than it sells the Aladdin?—A. I can't tell you. I never handled it, never sold a gallon.

Q. What grades have you handled and did you handle in all this territory that you have spoken of?—A. Water White and Prime White.

Q. What brand?—A. I used to have Eureka Water White and Eureka Prime White.

Q. Did you sell the Aladdin?—A. Oh, I suppose it was the Aladdin.

Q. Don't you know that that is their cheapest grade of oil?—A. I know that is their good grade of oil.

Q. The question is whether that is not their cheapest grade of Water White oil?—A. It is not.

Q. What is their cheapest grade of Water White oil?—A. I can't tell you that.

Q. If you can't tell, how do you know that the Aladdin is
11420 not the cheapest grade of their Water White oil?—A. Because I have sold for a good many years oil from the Standard Oil Company and I sold the Aladdin, and very seldom have a complaint.

Q. That does not answer my question. Are you willing to swear now that the Aladdin is not the cheapest grade of Water White oil that the Standard Oil Company puts on the market?

Mr. CAMPBELL. He does not undertsand what you mean by the word "cheapest."

A. It has always suited my trade. I have not any complaints.

Q. Don't they sell the Aladdin oil for a lower price than they sell any other brand of Water White oil?—A. I don't know the price of any other brand; I never handled that.

Q. Your answer is that you don't know; is that it?—A. I don't know. All I know is Aladdin.

Q. Now, was this oil that the Eureka was selling in Durham Aladdin oil?—A. I suppose it was.

Q. And was the brand that they were selling at Norfolk Aladdin oil?—A. I suppose it was. I sold two grades.

Q. How about Burlington?—A. I suppose it was the same thing. I sold two grades.

Q. You say you sold two grades?—A. Yes, sir.

Q. What was the highest price?—A. The Water White.

Q. Well, the Aladdin?—A. I suppose so.

Q. Then, the Aladdin was the best grade of oil, as you understand it, that you used in any of these towns?—A. It answered my purpose.

Q. No, no; not whether it answered you purpose.—A. I could not swear to that. I was not in the refinery when they filled those
11421 barrels. I could not say whether they put in Aladdin or what they put in.

Q. The oil was charged up to you, wasn't it, when you got it, or to the Eureka Oil Company?—A. To me.

Q. And the brand was given?—A. I haven't seen any bills; I don't know what brand they gave it.

Q. Well, didn't they charge you more for the Aladdin oil that you sold than they did for the other grade?—A. I can't tell you about that.

Q. Why?—A. I don't know. They never charged me with anything.

Q. Didn't they charge the oil out to you and send you bills for it?—A. No. I don't know. There was no price on my bills.

Q. There was no price put on it. Was there a brand on it?—A. I don't remember of my ever getting a bill.

Q. Now, did you ever hear of the Argand Refining Company?—A. I did, sir.

Q. Where did you first hear of that company?—A. From Mr. Powell, in the Standard Oil Company's office in Baltimore.

Q. When?—A. Some time during 1899.

Q. When was it?—A. During 1899.

Q. In 1899?—A. Or the beginning of 1900; I can't remember that.

Q. What did you first hear about that?—A. Mr. Powell told me. It was after I have investigated the conditions in Richmond and I have reported to him the conditions from Richmond. He told me to go over there and look for a location and start business there as the Argand Refining Company.

Q. As what?—A. As the Argand Refining Company.

11422 Q. Was that all he told you about it?—A. That is about all; yes, sir.

Q. Did he tell you where he got this name Argand?—A. No, sir; I did not ask him.

Q. Well, that was the name that you selected then?—A. No, sir; Mr. Powell told me to——

Q. Powell gave you that name?—A. Yes, sir.

Q. Had you ever heard of the Argand before that?—A. I don't believe I had; I could not say.

Q. Did you ever hear of a company over at Marietta, Ohio, by the name of the Argand?—A. I heard it afterward. As soon as I started there, J. H. Warden, the Southern Oil Company manager, is advertising it, before I put my tank wagon on the street; he sent circulars all over town stating that the Argand Refining Company is nothing but the Standard Oil Company.

Q. Did you ever hear about this company being at Marietta, Ohio?—A. That is the time I heard.

Q. That is the first time, is it?—A. I believe it was.

Q. Didn't Powell say anything to you about it?—A. He told me the Argand Refining Company.

Q. Were you ever in any way connected with the Marietta Argand?—A. After I started I was; not before.

Q. While it was at Marietta?—A. I don't remember if it was Marietta or Parkersburg.

Q. What is that?—A. Either Marietta or Parkersburg.

Q. What did you have to do with it when it was over there?—A. I just went over there to look around the oil wells. I had never seen

11423 an oil well in my life, and I took my vacation, and Mr. Powell told me to stop in Parkersburg or Marietta to look around the conditions over there.

Q. And when you were there you found the Argand?—A. No; I was working under the Argand in Richmond then.

Q. Well, you visited the Argand Refining Company plant at Marietta, didn't you?—A. I don't remember if it was Marietta or Parkersburg.

Q. Well, either one or the other?—A. Yes.

Q. You visited the plant?—A. I was over there; yes.

Q. Do you know a man by the name of Guthrie?—A. Yes, sir; I know him.

Q. Where did you see him?—A. I met him in the company's office in Baltimore.

Q. Is that the only place?—A. That is the only place.

Q. When was that?—A. That was about the same time I started in Richmond.

Q. What was he doing over there in the Baltimore office?—A. I have often seen him in Baltimore—often seen Mr. Guthrie.

Q. Where did you buy your oil that the Argand used?—A. From the Standard Oil Company.

Q. At Richmond?—A. In Baltimore.

Q. Did you ever buy it of the Argand Refining Company?—A. No, sir.

Q. Whom did you get it of?—A. The Standard Oil Company in Baltimore.

Q. Was the Argand company a refining company?—A. I can't tell you that.

11424 Q. I thought you said you visited their plant?—A. That time I was there I visited on a Sunday, and every place was closed; I could not tell whether it was working or not.

Q. Oh, you could not tell? You could not tell whether that refinery was a going concern——A. No, sir.

Q. Because it happened to be on Sunday?—A. I just passed the Argand Refining Company's plant as I did the other companies' plants.

Q. Did you just pass by it, or did you go there and visit it?—A. I just passed by, looking around the wells and looking around the refinery.

Q. Was that in Marietta or Parkersburg?—A. I believe it was in Marietta; I am not certain; I have forgotten that.

Q. Who was with you when you made that excursion down there?—A. Myself.

Q. You were alone?—A. Alone.

Q. How did you know that was the Argand Refining Company plant that you saw?—A. I asked.

Q. Whom did you ask?—A. The refineries over there lay three or four together, and as I passed along on the road I asked different people whose refineries those are, and one told me this is the Argand; this is somebody else's there, I have forgotten the name.

Q. You stopped and looked around there a little, did you?—A. Like I did the rest of the refineries.

Q. Well, you stopped and looked around there a little?—A. Not any more than I would any other refinery.

Q. You were there alone?—A. Alone.

Q. Just as a matter of curiosity?—A. Yes, sir.

11425 Q. Had you any acquaintances over there in Marietta?—A. I don't believe I had any.

Q. What did you go over there for?—A. The first time I went there just——

Q. I am talking about this time when you saw the Marietta refinery.—A. Just for curiosity, just to stop off and see the wells.

Q. Oh, for curiosity?—A. Yes, sir.

Q. Did the Argand have any wells?—A. I don't know whose wells they were; I had never seen a well in my life before, and I wanted to see it.

Q. Then, you went over there to see oil wells?—A. I also went to Parkersburg; stopped off there too.

Q. Where did you go from to get a look at those oil wells? Where did you start from?—A. I believe from Baltimore.

Q. You went from Baltimore clear to Marietta, Ohio, to see an oil well, did you?—A. Not only one; I saw a good many of them.

Q. Who paid your expenses over there?—A. The first time I paid myself.

Q. I am talking about the time when you saw the Marietta refinery?—A. Oh, I paid my own expenses.

Q. You paid your own expenses over there?—A. The first time.

Q. And you went there only and solely to see oil wells?—A. Yes, sir; I went through that part of the country.

Q. At your own expense?—A. Yes, sir.

Q. And did you see an oil well while you were there?—A. Yes, sir; I did.

Q. Quite a curiosity to you, was it?—A. Well, yes, sir; it was.

11426 Q. You hadn't any curiosity to look at this Argand Refining Company's refinery, had you?—A. Not any more than anybody else's.

Q. About how much money did you pay out in expenses and railroad fare to get over there to see that oil well?—A. I can't remember that.

Q. How long did you stay in Marietta?—A. Oh, about a day.

Q. Did you go to the hotel?—A. I don't believe I did. I pulled in there in the morning and had my lunch in some restaurant, and I went out to look around, and I pulled out.

Q. That was on Sunday, too?—A. I believe it was.

Q. Well, was it?—A. I believe it was.

Q. You are not sure about that?—A. I am almost certain. The first time was on Sunday.

Q. Were you driving past the Argand, or were you walking past there?—A. I was walking.

Q. You walked past. Did you go over to the plant—to the building?—A. There were other refineries there in the vicinity.

Q. I am not asking you that. I am talking about the Argand.—A. I did.

Q. Did you go over there?—A. I did.

Q. Did you go around it?—A. No; just on the street.

Q. Did you get off from the street?—A. No, sir; I don't believe I did; just looked from a distance.

Q. You said a few minutes ago you went over to it. What do you mean by that?—A. Well, it is close to the street.

Q. You just stopped and glanced at it?—A. Yes; I looked at it.

Q. Now, there was a refinery, presumably, that was refining
11427 oil that you were selling in Richmond?—A. No, sir.

Q. It was not?—A. No, sir; it was not.

Q. How did you get the name Argand?—A. Mr. Powell has got to answer for that. I don't know. That name was given to me.

Q. Well, if you were the Argand Refining Company, didn't you suppose you were using the Argand Refining Company's oil?—A. No, sir; my oil was coming direct from the Standard Oil Company at Baltimore.

Q. Didn't other people suppose you were using the Argand refinery oil?—A. I don't know about other people's thoughts.

Q. You had that on your letter heads, hadn't you, that your refineries were at Marietta?—A. I don't remember that—if we had or not.

Q. Where were these oil wells that you actually saw?—A. Around Marietta.

Q. You went out into the field and saw some of them?—A. Yes, sir; they were right close to the town.

Q. Were they pumping oil?—A. No, sir; they were not.

Q. Were they live, active wells or——A. I can't tell you that; I don't remember.

Q. There is not very much to an oil well, is there; simply a pipe driven into the ground; that is all there was to it, isn't it?—A. No; there was a big hole and some buildings around and a pump.

Q. The pumps were not working?—A. I could see the pump.

Q. The well was not working, as far as you could see?—
11428 A. As far as I could see. I don't remember whether it was or not; it is too long ago.

Q. How is that?—A. It has been too long; I don't remember that.

Q. You had no other purpose in the world in going to Marietta than to see an oil well?—A. That is the first time; yes, sir.

Q. What was the nearest oil well you could get to from Baltimore?—A. Well, I wanted to see part of the town.

Q. Why?—A. I had a clerk who came from Marietta.

Q. A clerk?—A. Yes. And I wanted to see the oil regions and the refineries and the wells. He told me to stop off at Marietta; it is a very pretty little town.

Q. You wanted to see the town then, because you had a clerk at one time that lived there?—A. I was at Parkersburg, and it is only across the bridge; so I thought I will go there to see that town.

Q. You didn't go there to see the Argand refinery, did you?—A. Not exactly to see the Argand refinery. If the Argand refinery hadn't been there I would have gone to Marietta anyway.

11429 Q. You knew there was an Argand refinery there, didn't you?—A. I was representing the Argand Refining Company at Richmond at the time.

Q. And you knew it was represented that their refinery was at Marietta, didn't you?—A. I never represented that.

Q. How is that?—A. I never represented that.

Q. Well, did you represent that it was not there?—A. I represented the Argand Refining Company. I never represented about having any refinery anywhere.

Q. Over what railroad did you go from Baltimore?—A. Over the B. & O.

Q. Now, you spoke about being there a second time. When was that?—A. In 1900; the beginning of 1900, I believe.

Q. What were you doing over there then?—A. Mr. Powell sent me there to examine some storage tanks that the Argand Refining Company had in Marietta.

Q. Was the Argand refinery running then?—A. No, sir.

Q. How long had it been closed down?—A. I could not tell you that.

Q. Did Powell tell you anything about it?—A. Not a word.

Q. Well, all there was there was the storage tanks?—A. And buildings—stills.

Q. What buildings were there there?—A. Oh, I can't remember; several buildings.

Q. Were there other refineries right near it in operation?—A. I believe there were.

Q. You went there simply to look over those tanks and returned, I suppose?—A. I examined those tanks; yes, sir.

11430 Q. And made your report to Mr. Powell?—A. Yes, sir.

Q. Did you get any oil at any time from the Argand refinery?—A. Not to my knowledge.

Q. Did you have any correspondence with the Argand refinery, or any communication with anybody connected with it?—A. I may have had some correspondence with Mr. Guthrie. I don't remember about that, either.

Q. Was Guthrie at Marietta or was he at Baltimore before you had correspondence with him?—A. He must have been there at Marietta or Parkersburg.

Q. Well, did you or did you not?—A. I can't remember that.

Q. You don't remember whether you did or not?—A. I can't remember.

Q. Did you ever have any conversation with Guthrie about the business of the Argand Refining Company?—A. I can't remember that.

Q. You received letters from Guthrie, either from Baltimore or Marietta, didn't you?—A. Why, I can't say I did.

Q. Can you say you did not?—A. I can't say I did not.

Q. What did you start the Argand in at Richmond for?—A. I was instructed by Mr. Powell to do so.

Q. You went there first and investigated, didn't you?—A. Yes, sir.

Q. You found about the same conditions there that you found in Norfolk, didn't you?—A. About the same.

Q. You found that they had the 20-gallon system there, didn't you?—A. Yes, sir.

Q. You found that they had colored drivers?—A. Yes, sir.

11431 Q. Did you find any other defects in the business at Richmond?—A. Yes, sir. They didn't have enough tank wagons.

Q. They did not have enough tank wagons to do the business?—A. To do the business.

Q. Anything else?—A. That is all I can think of.

Q. Well, you reported that back to Powell?—A. I did, sir.

Q. What did Powell do then?—A. He told me to go to Richmond and look for a location and start business there, so our Mr. West will get busy.

Q. Mr. West was your agent there, wasn't he?—A. Standard Oil Company agent.

Q. And up to that time he had been doing all the business for the Standard Oil Company in that city?—A. I can't tell you that.

Q. So far as you know they had no other agent there?—A. As far as I know they did not.

Q. Now, did you suggest to Powell that the best thing for him to do to right up that situation was to direct Mr. West to abandon the 20-gallon system and put white drivers on in place of the colored ones?—A. I don't remember that.

Q. And put on more tank wagons?—A. I don't remember that.

Q. If that had been done that would have righted up the whole situation, wouldn't it?—A. No, sir.

Q. What was the trouble there?—A. Some of those people have been sore on the company because they had left them without oil, neglected them.

Q. Any other trouble there?—A. I don't know what you may call trouble.

11432 Q. Did you report anything else to Powell?—A. Yes, sir; I reported there is another company there.

Q. What other company?—A. The Southern Oil Company.

Q. Oh, yes; an independent one?—A. I don't know whether they were or not.

Q. Well, did you think it belonged to the Standard?—A. I don't know what I thought.

Q. You don't know?—A. No, sir.

Q. If you had thought it belonged to the Standard it would not have been necessary for you to report to Powell, would it?—A. I don't know. I may have reported anyway.

Q. Well, you reported that the Southern was there?—A. Yes, sir.

Q. Don't you think Powell knew that before?—A. He never told me before I went there.

Q. Your agent there, Mr. West, knew all about it, didn't he?—A. I can't tell you what he did.

Q. He could not have come in contact with the business there without knowing it, could he?—A. I don't suppose he could; no.

Q. You told Powell about that Southern Oil Company there?—A. Yes, sir.

Q. There was considerable competition there at that time, wasn't there?—A. Oh, I can't tell you.

Q. You can't tell?—A. No.

Q. Do you know what the prices were at that time on Water White oil?—A. I don't remember.

Q. Were they low or high?—A. I can't tell you. I don't remember that.

11433 Q. You don't remember?—A. No, sir.

Q. Did you know at the time?—A. At the time I did; yes, sir.

Q. And you reported to Mr. Powell?—A. Mr. Powell knew the prices better than I did.

Q. He would know that from the reports he received from his agent there?—A. They have got a record in the office.

Q. Then you do not think that that whole situation could have been righted up there by discharging those colored drivers, putting white men in their place, and by abandoning the 20-gallon system?—A. I do not think it could; no, sir.

Q. Why not? Tell me why.—A. Because, as I stated before, the people had been——

Q. They had been neglected?—A. They had been neglected and they had been sore.

Q. And you thought it would not sweeten them up if another company went in there?—A. I didn't give my opinion at all. Those are the instructions from Mr. Powell.

Q. Did Mr. Powell tell you it would?—A. No, sir; he told me, "If you go in there it will awaken Mr. West; he will get busy."

Q. Wouldn't it have been a very natural thing for him to have discharged those colored drivers and to have abandoned the 20-gallon system?

Mr. CRAWFORD. One moment. I object to that as incompent, speculative, and calling for a conclusion. It is improper to ask this witness his opinion on any such matter. Anything that he knows is all right. He can not possibly know that. It does not call for his knowledge.

A. I can't tell you that. This was Mr. Powell's business.

11434 Q. He could have fixed up that whole business, couldn't he, by discharging Mr. West and putting you in there?—A. Well, it is up to Mr. Powell. I couldn't tell you which would have suited him best. Maybe I wouldn't have gone to Richmond.

Q. Was it necessary, do you think, for the Standard to start another company in there in order to correct the abuses of its own company in the same place?—A. I can't tell you that. Those were the orders, and I fulfilled my orders.

Q. You were simply following orders?—A. Yes, sir.

Q. Didn't it occur to you that it was a mighty foolish thing for the Standard Oil Company to take that method of correcting the abuses of Mr. West?

Mr. CRAWFORD. I object to that as irrelevant, immaterial, and incompetent.

A. It is not what occurred to me; it is what the Standard Oil Company did.

Q. It made a considerable expense, didn't it?—A. I can't tell you about that neither.

Q. You don't even know that?—A. No, sir.

Q. Well, you were getting $150 a month?—A. Yes, sir.

Q. You were regarded as a valuable man by the Standard Oil Company, weren't you?—A. They never told me that.

Q. They didn't? You were still speaking seven or eight different languages, weren't you?—A. I believe I did.

Q. And they took up your time—your valuable time, with all of your linguistic qualities——A. This was up to them.

11435 Q. And sent you down there to run the Argand for the sole and only purpose of correcting the methods of Mr. West, their own agent?—A. I can't tell you what subject at all. I was sent there and I went there.

Q. Did it ever occur to you that they sent you there to run out the Southern Oil Company?—A. It never occurred to me; no.

Q. That thought never entered into your mind?—A. No, sir. Wherever the Standard Oil Company have got trouble in their field it is the man's own fault.

Q. Every time?—A. Every time.

Q. It is not the competitor's fault, then, is it?—A. No, it is the special agent's fault or the tank wagon driver's.

Q. Most concerns would discharge such a man, wouldn't they, and put a good man in there?—A. Which concerns?

Mr. CRAWFORD. That is objected to as incompetent, irrelevant, and immaterial.

A. The Standard Oil Company, as a rule, generally gives them a chance before they discharge them, but finally they do discharge them.

Q. Well, they generally discharge them after they run a few companies in there a few months and get the business, don't they?—A. No, sir; they generally discharge them after they convince themselves it is the fault of the man who is in the place and has lost the business after he has been given due notice and several chances.

Q. What were the initials of Mr. West? What Mr. West was it?—A. I believe I. G. West.

11436 Q. He was promoted to a higher position, wasn't he?—A. I can't tell you that.

Q. Don't you know that?—A. No, sir. I know he left Richmond.

Q. Did you ever see him in Baltimore? Did you see him in Baltimore after that?—A. I don't remember; I may have seen him.

Q. You don't remember?—A. No, sir.

Q. Didn't you see him around the Baltimore office right along after he left Richmond?—A. I may have seen him. I don't remember that.

Q. Don't you know that they promoted him and took him into the office there?—A. No, sir.

Q. That you don't know?—A. I do know when they take a man away from the outside, that they want to give a chance, they take him close to home so they can learn him something.

Q. You think they took him into the main office, then, to educate him?—A. He was never in the main office. He was a subagent there some place in Baltimore; but just to show him how, so they can talk to him every day and see his way of doing business, whereas they can not see in Richmond.

Q. Then, as I understand you, when they have a man that is unsatisfactory and is losing business, and is not satisfying the trade, they do not discharge that man—that is not the way they handle him, but they send a company in there under another name, at a great expense, first, to educate him in the field; then they take him into the home office so that they can have him near to them and they educate him there?—A. You misunderstood me, Mr. Morrison.

11437 Q. Oh, that is not the way they do it?—A. I didn't say they generally discharge him after they send out a bogus company. I have known cases where they have discharged people where there was no bogus company.

Q. Sure. And you have known them to discharge them where there was, haven't you?—A. Well, I have known them to discharge them all the time, in different cases.

Q. Now, in this particular case they did not discharge Mr. West, did they?—A. I can't tell you. I believe they took him closer to home.

Q. Did you ever conceive a reason for their taking him closer home if he was a failure in Richmond?

Mr. CRAWFORD. I object to that as immaterial and irrelevant.

Mr. CAMPBELL. Also upon the ground that the witness has already testified to his opinion on that subject.

A. Yes, sir.

Q. What was it?—A. The reason was to keep him closer to home and go over the business with him oftener than they could if he would be in Richmond.

Q. When they got him up in the home office he ceased his connection with the Richmond office?—A. He was never in the home office, that I know of, because I was in the home office.

Q. Where was he?—A. Some substation in Baltimore; I don't remember the place.

Q. Well, was he at a substation in Baltimore?—A. I believe he was, but I know he was not at the home office.

Q. You said a little while ago you did not know.—
11438 A. Well, I didn't know. I did not see him in the home office. I never went to the substations.

Q. Now, let me ask you this: Was he or was he not put in charge of a substation in Baltimore after he left Richmond?—A. I believe he was.

Q. Which station was it?—A. Some station in Baltimore; I don't know.

Q. You do not know which one it was?—A. No, sir.

Q. Well, he is one of the original Wests, isn't he, that helped to organize the Standard Oil Company?—A. Now, you ask me too much, Mr. Morrison; I don't know that.

Q. You don't know? How long did you keep the Argand running at Richmond?—A. Some time during 1899 and 1900.

Q. How long were you running and operating the Argand at Richmond?—A. I had charge of that, I believe, about a year or ten months. I don't remember that.

Q. When you first went there Warner Moore was running this Southern, wasn't he?—A. Warner Moore was the owner of the Southern, and J. H. Warden was running it.

Q. Did they have a pretty good business at that time?—A. I could not tell you that.

Q. Didn't you find out?—A. There was no way for me to find that out. I know they did some business, but I could not tell you how much business.

Q. Did their business increase or decrease?—A. That is more than I could tell you. I do not know. I had enough to do to look after my own business.

11439 Q. On your direct examination you said that at one time they had a good business, and that afterward Warden was dissipated and they did not have much business left.—A. That is what I have learned from the trade in Richmond.

Q. When was it, now, that they had a good business?—A. Oh, years ago, I suppose.

Q. Well, when? Years ago, of course.—A. I don't remember.

Q. Before or after you went to Richmond?—A. Oh, years before I went to Richmond.

Q. Don't you know that Mr. I. G. West was made special agent in charge of a large territory after he left Richmond?—A. I don't know that.

Q. Don't you know that he was in charge of that territory as late as 1903?

Mr. CAMPBELL. What territory?

A. I don't know that. I know he had some position there, but I didn't know what his position was.

Q. Didn't you see him around the office in Baltimore?—A. I didn't go to his office; I never met him in the home office. He may have went there, but I never met him.

Q. Petitioner's Exhibit 738 shows a report to him from Hagerstown, Charlottesville, Charleston, Frederick, and Winchester, Virginia.

Mr. CRAWFORD. What year, Mr. Morrison?

Mr. MORRISON. 1903.

Mr. CRAWFORD. That was five years after this.

Mr. MORRISON. Yes; that is it. That is what we are seeking to show—that Mr. West was not a failure, but a success.

11440 WITNESS. Well, a man can learn a great deal in five years. You keep a man under your eye all the time and instruct him, why, he can learn.

Q. How old a man was Mr. West when you knew him?—A. Oh, I am a very poor judge of age, Mr. Morrison.

Q. You can give us some idea whether he was an old man or a young man, can't you?—A. I can't tell you his age. A middle-aged man, I think.

Q. Was he a middle-aged man?—A. I believe he was a middle-aged man. That is the reason he learned so quick.

Q. What became of the Argand?—A. I don't know, sir.

Q. Do you think you would know Mr. Guthrie's signature if you were to see it? [Handing witness paper.] Just look at the signature, that is all.

Mr. CAMPBELL. Have you ever ever seen him write, Mr. Blaustein?

WITNESS. I never have; I never saw him write.

Q. Well, look and see whether you think that is his signature or not.—A. It may be. I can't really tell you whether it is or not.

Q. You have received letters from him, haven't you?—A. Yes; but I never paid enough attention to them. I don't believe I received any. I don't remember it.

Q. Does that look like the signature of the letters you received?—A. I can't tell you if I received any letters first.

Q. What is that?—A. I can't tell you if I received any letters. I told you on cross-examination that I don't remember. I may have received them.

11441 Q. Well, what is your opinion now?

Mr. CRAWFORD. I object to that.

A. I can't give you my opinion because I have not seen him writing.

Q. Look at the letter head. Did you ever see that letter head before?—A. I don't believe I did.

Q. Look at this one and let us see if you ever saw that one. [Handing witness another paper.]—A. The letter head?

Q. Just the letter head, that is all.—A. I could not; I don't remember that.

Q. You don't know?

Mr. CAMPBELL. May I see them now?

Mr. MORRISON. I have not offered them in evidence.

Mr. CRAWFORD. Well, you have questioned the witness in regard to them.

Mr. MORRISON. But he does not recognize them.

Mr. CRAWFORD. I ask to be allowed to see the two papers which the witness has been interrogated about.

Mr. MORRISON. We decline to show them to you until we get ready to offer them.

Mr. CRAWFORD. I understand you decline to let us see them. I claim we should be allowed to do so since you have interrogated the witness about them.

Mr. MORRISON. When we offer them you will be clearly entitled to see them, but you are not entitled to see them now.

Mr. CAMPBELL. Are you going to offer them?

Mr. MORRISON. That depends on whether we identify them later on.

11442 Q. Did the Argand in Richmond deliver from tank wagons?—A. Yes, sir; they had one tank wagon there.

Q. They had four?—A. One.

Q. One. Did they increase the number during the time that it was operating in Richmond?—A. I believe it did put on a real small wagon for gasoline, about a 150-gallon tank wagon.

Q. You never had more than two wagons, had you?—A. No, sir; not for the Argand.

Q. How many wagons did the Southern Oil Company have on the streets when you first went there with the Argand?—A. I believe three or four; I don't remember.

Q. How many did the Standard have on the streets?—A. They did not have enough, I know; they only had four, I think.

Q. You think they had four?—A. Yes.

Q. Were any of these companies selling oil in barrels, too, at the same time in that territory?—A. I could not tell you that. I was not selling anything in barrels.

Q. What do you mean by saying the Standard did not have enough? Weren't they able to satisfy their trade?—A. No. Mismanagement from the special agent, who didn't recommend to put on more.

Q. They were able to deliver all the oil they sold, weren't they?—A. They used to neglect a good many customers, not having enough tank wagons.

Q. When did you become acquainted with Warner Moore?—A. I don't remember the exact date. I believe it was in 1899.

Q. He accused you of being connected with the Standard
11443 Oil Company, didn't he?—A. I believe he did.

Q. What did you say to him?—A. I just laughed him off. I said, "If you know it, why, there is no use of me saying anything. Suppose I am?"

Q. Did he say to you, "Why, you are nothing but the Standard Oil Company. Why don't you call yourself the Standard Oil Company?"—A. I don't remember whether he said that or not.

Q. You don't remember that?—A. No, sir.

Q. Well, did you remember it in your direct examination?—A. I don't remember correct. He may have said it.

Q. Well, that is what you said.—A. Then, if I said it, he did.

Mr. CRAWFORD. What page is that?

Mr. MORRISON. Page 11257, near the top of the page. "I met Mr. Moore and I introduced myself to him, and he was glad to see me, and he told me, he says, 'Why you are nothing but the Standard Oil Company. Why don't you call yourself Standard Oil Company?' I told him the same thing," etc.

WITNESS. I may.

Q. How does it happen that you remembered that on your direct examination, and now you say that you don't remember that it was said?—A. I don't remember. I believe he asked me if I am the Standard Oil Company. I must have given him that answer.

Q. Oh, that is all? You are testifying, then, to what you think you must have said rather than what you remember you did say? Is that so?—A. I testified on my direct examination this must be right; I must have said it. I can't remember that.

11444 Mr. CAMPBELL. You don't remember the exact words, Mr. Blaustein?

WITNESS. No, sir; not the exact words.

Q. Is your memory as good now as to these conversations as it was last Friday, when you testified on your direct examination?—A. I believe it is, but I can't remember the exact wording of it.

Q. On last Friday you testified as I have said here, and the record shows it. This morning you say you don't remember whether you said it or not.—A. I don't remember that I have said it here in the direct testimony; no, sir.

Q. Were you selling in barrels at that time?—A. What time are you referring to?

Q. At the time you had the conversation with Warner Moore.—A. No, sir.

Q. Didn't he say to you, "Are you going to continue business selling in barrels?" and did you say, "No; I expect to erect storage tanks?"—A. He told me——

Q. No; answer that question. Did he say that to you, and did you make that answer?—A. He said to me——

Q. No, no; answer my question.

Mr. CAMPBELL. Answer it your own way.

Mr. MORRISON. No, sir; answer this question yes or no.

Mr. CAMPBELL. Answer it your own way, or don't answer it at all.

Mr. MORRISON. I will see that he answers it. I will go into court and make him answer that question. Just read the question back to the witness.

11445 (The reporter read the question as follows: Didn't he say to you, "Are you going to continue business selling in barrels?" and did you say, "No; I expect to erect storage tanks?")

A. The question was not right asked. I never said continue selling in barrels. He asked me if I am going to continue loading my tank wagon from barrels, into tank wagons, or will I erect storage tanks.

Q. Oh, yes. Did he ask you this question, "Are you going to continue business selling in barrels?" Did he ask you that question?—A. He asked me the question——

Q. No, no; answer my question. Did he ask you that question?—A. Well, I can't say if he did. It is misquotation there. He asked me——

Q. No, no; I am not talking about quotation. Did you make this reply to him: "No, sir; I expect to erect storage tanks?"—A. That is right, sir.

Q. You said that?—A. That is the answer; yes, sir.

Q. Were you at that time selling in barrels?—A. No, sir; I have been pumping from barrels in the tank wagons.

Q. Had you been selling in barrels——A. In Richmond?

Q. Yes.—A. No, sir.

Q. The Argand never sold in barrels in Richmond?—A. In Richmond; no, sir.

Q. You stated here that Mr. Warner Moore suggested that he would like to sell out his business to the Argand.—A. Yes, sir.

Q. Did the Argand ever suggest that it would like to sell its business to Warner Moore?—A. No, sir; I don't know of any.

11446 Q. Or did you ever suggest to him that you wanted to buy him out or buy out the Southern?—A. No, sir; I suggested to him to lease me some tanks or sell me some tanks. I never suggested to him to sell out the Argand, because it was not in my power to do so.

Q. What tanks were you referring to?—A. Storage tanks.

Q. Did he have more storage tanks than he needed?—A. I asked him whether he had or not; I didn't know that, but afterwards he told me he hasn't any.

Q. He was a competitor of yours down there, wasn't he?—A. I don't know whether he was or not. He didn't call himself a competitor.

Q. You didn't know whether you were competing there with the Standard or not?—A. I know I was selling oil to that trade and they were selling to my trade.

Q. How long had the Argand been in Richmond when Warner Moore suggested to you that he would like to sell out to you?—A. About a month or so or six weeks. I don't remember.

Q. Was Warner Moore delivering in barrels or was the Southern Oil Company?—A. They had tank wagons, I have stated.

Q. Were they delivering in barrels at all?—A. Not in Richmond proper. I don't know.

Q. Well, were they outside?—A. I can't tell you that; I wasn't doing business outside.

Q. I thought when you got the Southern you got about 1,500 barrels?—A. Oh, after I bought them I knew it, but not at the time I was operating the Argand.

Q. Then they were doing a barrel business, weren't they?—
11447 A. I have learned afterward; yes, sir.

Q. When did you buy the Southern?—A. I don't remember the date; I don't remember the month.

Q. You don't remember the month?—A. No, sir. It was during 1899.

Q. What part of the year?—A. I believe it was in the fall of the year, July or August; I don't remember the month.

Q. You think it was probably July or August?—A. I believe it was in the fall of the year, if I am not mistaken.

Q. What time in the year did you go to Richmond with the Argand?—A. In the spring, March or April; I don't remember as to that.

Q. And did you make the contract with Warner Moore for the sale of the Southern to the Argand?—A. I believe I did.

Q. Was there any agreement about his staying out of the oil business?—A. I believe there was.

Q. For how long a time?—A. I don't remember that.

Q. Did you prepare the contract?—A. My lawyer did. I had a lawyer there.

Q. Your lawyer, was it?—A. Yes, sir.

Q. There at Richmond?—A. Yes, sir.

Q. Who instructed you to do that?—A. Nobody. After I have explained to Mr. Powell that Mr. Moore was willing to take our terms he told me to go and look for a lawyer, but he didn't give me any particular lawyer to go to. I asked Mr. Moore if he knew of any good lawyer, and he gave it to me.

Q. I don't care anything about that. What I want to know is whether or not you were directed from the Baltimore office to
11448 carry out this deal and buy the Southern?—A. Yes, sir.

Q. The Southern had some trade at that time in Richmond, hadn't they?—A. I guess they had some trade. I don't know what it amounted to.

Q. What did you buy them for?—A. I didn't buy them. I was instructed to buy them.

Q. What for?—A. I couldn't tell you that.

Q. You don't know why the Southern was bought out, eh?—A. No, sir. They were willing to sell, and I suppose the company were ready to pay them the price offered them.

Q. And who ran the Southern after you made that purchase?—A. I did.

Q. You took charge of the Southern then, did you?—A. Yes, sir.

Q. What became of the Argand, the company you had been running?—A. We bought in the name and the good will of the Southern Oil Company.

Q. No; I am not asking you anything about the Southern Oil Company. I am asking you what became of the Argand after you started to run the Southern.—A. They have changed the name to Southern.

Q. What is that?—A. Changed the Argand's name on the tank wagons to the Southern Oil Company.

Q. Then you operated under the name of the Southern Oil Company after that?—A. Yes, sir.

Q. That is what I am getting at.—A. Yes, sir.

Q. Then that was the last, so far as you know, of the Argand, wasn't it?—A. As far as I know; yes, sir.

11449 Q. The name was dropped as soon as you bought the Southern?—A. The name in Richmond was dropped, as far as I know.

Q. Well, was it ever revived anywhere else, to your knowledge?—A. I could not tell you that.

Q. You never heard of its operating after that, did you?—A. I don't know whether I did or not. I may. I can't remember that.

Q. You painted over your wagons, did you, and put the name Southern Oil Company on?—A. No, sir.

Q. You put the name Southern Oil Company on, did you?—A. We used the Southern Oil Company wagon.

Q. What did you do with the Argand wagon?—A. We sent it to the Standard Oil Company. We only had one and half wagon.

Q. Were they sent back to you?—A. They were sent back to the Standard Oil Company at Canton, where they came from.

Q. At Baltimore?—A. At Baltimore.

Q. Did you get them back again?—A. No, sir; I don't think I did.

Q. So you sent the Argand wagon to Baltimore?—A. We had too many wagons there.

Q. And were the wagons that you got of the Southern Oil Company sufficient to do the business of both companies, both the Argand and the Southern?—A. I believe it must have been.

Q. Well, was it or wasn't it?—A. I think it was.

Q. Did you put on any more wagons than the Southern had?—A. I don't remember that. I don't believe I did.

Q. They had four, hadn't they?—A. They had four, but I

11450 don't remember how many they were running on the street.

Q. Did the price of oil advance in Richmond immediately after this sale?—A. Not immediately after the sale. It advanced.

Q. It advanced very soon afterward, didn't it?—A. Oh, about a month or two, but that advance was in general.

Mr. CRAWFORD. What is that?

WITNESS. In general, all over the field.

Q. I am not asking you that.

Mr. MORRISON. I move to strike that out as not responsive to any question and as purely voluntary on the part of the witness.

Mr. CRAWFORD. He is testifying to the facts.

Mr. MORRISON. He is more anxious to argue the case than to give his testimony and answer questions.

Mr. CRAWFORD. I respond to that objection by saying that the answer of the witness is perfectly proper, and was called out by the counsel's question. It is a perfectly proper explanation.

Mr. MORRISON. I have too good an opinion of you as a lawyer to think that you really believe that, Mr. Crawford.

Mr. CRAWFORD. Well, we will leave it to the court.

Q. Now, do you swear that it did not advance more in Richmond than it did in the surrounding territory?—A. I can not tell you how much they have advanced in the surrounding territory, but I do remember they advanced some there.

Q. Well, it advanced two or three cents, didn't it, within
11451 two or three weeks after you got the Southern?—A. I don't remember the date, and I don't remember how much of an advance.

Q. You remember there was a sharp advance?—A. All over the field at that time.

Q. Do you say now there was the same advance all over the field?—A. I could not tell you the same. I don't remember.

Q. Why do you say all over the field if you don't know?—A. Because I was notified from Mr. Powell to advance my price in Durham and all over the points at that time.

Q. At what other point did you advance your price at the same time?—A. I believe in Norfolk, if I am not mistaken.

Q. You were still running the business at Durham, were you?—A. At that time running in Durham; yes.

Q. Yes; at the time you bought the Southern.—A. I believe I was.

Q. Well, were you?—A. Yes; I ran in Durham, but I don't believe I ran in Norfolk.

Q. How is that?—A. I don't believe I had a wagon on Norfolk any more.

Q. Did you fix the price at which the Durham agency sold or did Powell fix it?—A. You mean for the Standard Oil Company's agent?

Q. Yes.—A. Powell fixed that, but I was notified——

Q. Who fixed it for the Eureka in Durham?—A. I did; Powell told me to fix it.

Q. Then, whenever Powell wanted to raise or lower the price
11452 of the Eureka in Durham he did it through you?—A. No, sir; he did it through the special agent, and the special agent of a certain point informed his superintendent to advance the price or lower the price.

Q. You hadn't anything to do with it?—A. No, sir.

Mr. CRAWFORD. Are you speaking of the price of the Eureka or the Standard?

WITNESS. The Eureka. Mr. Powell used to inform me, and I used to inform my commission man or jobbers.

Q. Then, I asked you a moment ago if it was not true that whenever Powell wanted the price of the Eureka raised in Durham, whether or not he did not do it through you?—A. For the Eureka through me; yes, sir.

Q. He did not do it directly?—A. No, sir. Through me.

(A recess was here taken until 2 o'clock p. m., at which time, in the absence of the special examiner, Mr. Louis V. H. Albers, a notary public, 70 Covert street, Brooklyn, New York, being a notary public for Kings County, certificate filed in New York County, swore the following witnesses: William A. Jones, J. G. Watts, James B. Hazlett, Myron L. Case, and H. R. Klauser. As a matter of accommodation the two latter witnesses were examined immediately after the recess, and thereupon the cross-examination of Mr. Blaustein was resumed.)

11453 MYRON L. CASE, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Case, where do you live?—A. Bowling Green, Ohio.

Q. Are you interested in the business of oil production?—A. I am.

Q. For how many years does your connection with that business extend?—A. Since 1887.

Q. In what fields?—A. In the Wood County, Ohio, field and the Indiana field, that is, the northern Indiana field.

Q. Is the Wood County field part of what is commonly called the Lima field?—A. It is known as a part of the Lima field.

Q. They produce what is called North Lima oil or South Lima oil?—A. North Lima oil.

Q. Have you conducted business in your own name, or in the name of some company, or how?—A. In the name of companies and corporations.

Q. Mention one.—A. The firm of Case, McDonald & Company.

Q. What years was that?—A. That was, I think, in 1888 up to 1892. Before that I was interested in a copartnership, in 1887 and 1888; I don't remember just what the title was, but it consisted of Mr. D. C. Brauley, Mr. Waldo Hardison, and myself.

Q. Well, after 1892?—A. After 1892, in 1894, we had in Indiana what was known as the Arlington Oil Company.

Q. How long were you connected with that company?—A.
11454 About three years. And then the Royal Oil Company, an Indiana corporation, for about the same length of time.

Q. In what field did those two companies operate?—A. In Indiana.

Q. Were you at the same time doing business in Ohio?—A. No, sir. I had closed my affairs in Ohio at that time. Later, in January, 1900, I was a member of the Exchange Oil Company.

Q. Where? What field does that cover?—A. In the north Lima oil field. And we operated with that company until 1904.

Q. When was the Lima oil field first opened? When did they first begin to produce oil there?—A. I think it was in 1886.

Q. And that was a little while before you began business?—A. Yes, sir.

Q. What was the crude oil used for in the first instance, if you recollect?—A. As far as I knew it was used for fuel.

Q. Fuel only, as far as you know?—A. I knew of no other use for it.

Q. And for how long did that continue to be true?—A. I think it was somewhere about 1889 or 1890 that they began to do some refining of it in that locality.

Q. Do you happen to know what the prices of that Lima crude were in the period from 1886 or 1887 to 1890?—A. When I began operating it was 15 cents a barrel.

Q. 15 cents a barrel of how many gallons?—A. I think 42.

Q. That means 42 gallons of crude oil just as it came from the wells?—A. Yes, sir. I believe my first sale was at 17½ cents, and it soon went to 15 cents.

11455 Q. Do you know how long the prices continued around that low point?—A. I have not the dates accurately, but somewhere from two to three years.

Q. About when did this Lima oil begin to be refined on a considerable scale?—A. About 1890.

Q. Do you know by whom and where?—A. It was refined at Lima, Ohio, by what, as we understood it to be, the Standard Oil Company.

Q. Is that the same refinery that exists there now?—A. Yes, sir.

Q. Subsequent to that period was there any change in the price?—A. Yes, sir.

Q. Which way?—A. Oil went up.

Q. How has the general course of prices been since that time?—A. The average of it has been advancing.

Q. What are the prices now of Lima oil?—A. Lima is 99 cents, North Lima $1.04.

Q. When you say Lima, you mean what is sometimes called south Lima?—A. South Lima, yes, sir.

Q. One is 99 cents and the other $1.04?—A. Yes, sir.

Q. You mean 99 cents and $1.04 a barrel, do you?—A. Yes, sir.

Q. So that the price, then, when you began in 1887 was around 15 or 20 cents?—A. Yes, sir.

Q. And you say that somewhere around 1890, when refining was begun on a large scale, prices went up and now they are around a dollar?—A. Yes, sir.

11456 Q. Will you tell us very briefly how the producing oil business is managed? Who owns the land usually, to begin with?—A. Generally a farmer owns the land.

Q. And the producing company or the producing firm, what interest has it?—A. It leases the land of the owner upon a royalty basis.

Q. How is that royalty paid—in money or in kind?—A. It is paid in kind.

Q. That is to say, a certain proportion of the oil, is it?—A. As a rule; nowadays we give one-sixth of the oil in pipe line.

Q. And the balance goes to the producer?—A. Goes to the producer.

Q. Now, what becomes of the oil when it is first pumped from the wells?—A. It is pumped into tanks owned by the company operating the lease.

Q. That is, by the producing company?—A. Yes, sir.

Q. And then where does it pass?—A. It then passes into the pipe lines.

Q. To what pipe-line company or to what other customers have you, or the concerns that you mentioned here, sold your oil?—A. We have sold to the Buckeye Pipe Line Company, to the Manhattan, and to the Sun Oil Company.

Q. Whichever pipe line it is to which you sell, how does the oil get to that pipe-line company?—A. They lay a line to the farm and connect it to the tanks.

Q. Connect it to the tanks of the producer?—A. Of the producer.

11457 Q. Then it is carried through the pipe line to their main trunk line?—A. Yes, sir.

Q. Or to some other point that they fix upon, is it?—A. They take it and pump it into their own line.

Q. They take it at the producer's tank?—A. They take it at the producer's tank.

Q. That is where the delivery is made by the people?—A. Yes, sir.

Q. How is the producer paid for that, in general?—A. They issue a sale order and send it to one of their purchasing agents, and we receive our check for the amount of the oil at the current price.

Q. Is that on the day when you deliver the oil?—A. No, sir. We have the right to sell at any time. We can leave it in the line thirty days without paying storage, and we can get a certificate if we desire and carry the oil or leave it as a credit balance.

Q. What you mean to say is that after it is delivered to the pipe-line company you have a credit of oil with them?—A. Yes, sir.

Q. And, as I understand, you are at liberty to leave that with them for a month or thirty days without charge, and longer by paying storage?—A. Yes, sir.

Q. And you may sell it at any time while it is in their possession at the price on the day of sale?—A. Yes, sir.

Q. Is that right?—A. That is right.

Q. In your dealings with the Buckeye Pipe Line, when
11458 sales have been made, when has the oil been paid for?—A. We generally sell the first of every month.

Q. That is not quite my question.—A. Excuse me.

Q. When you do sell, when do you get your money?—A. We get a draft at once.

Q. In other words, it is a cash sale, is it?—A. A cash sale; yes, sir.

Q. As soon as you signify your desire to sell it?—A. Yes, sir.

Q. How did the quantity of oil that was produced in the Lima field in those early years—that is, from 1887, say, to 1890—compare with the quantity that was produced later—I mean by all producers.—A. In the north Lima field I think our heaviest production was along in 1888 to 1890 and 1891 and 1892.

Q. How was it in the south Lima field?—A. I have little knowledge of the south Lima field.

Q. Isn't it a fact that the total amount of oil that was produced throughout the Lima field greatly increased along in the early nineties?—A. From 1888 into the early nineties it did; yes, sir; especially in the north Lima field.

Q. Do you know whether there was more product produced than there was any immediate market for—I mean to burn, or to refine, or for any such purpose?—A. There was more produced than was moved away from that locality.

Q. What was done with it?—A. It was stored in iron tankage, which was constructed in the immediate vicinity of where we were producing it.

11459 Q. Who built this tankage?—A. The Buckeye Pipe Line Company.

Q. How extensive was that?—A. Well, it was quite extensive. They did a great deal of work in that. I don't know as I ever knew as to the number, but it has run well into the hundreds of tanks.

Q. You means hundreds of tanks?—A. Yes, sir.

Q. Do you know how large those tanks were?—A. They were said to be 35,000, or about that.

Q. 35,000 what?—A. 35,000 barrels capacity.

Q. You mean that a single tank had a capacity of 35,000 barrels?—A. Yes, sir.

Q. And there were some hundreds at least of those tanks?—A. Yes, sir.

Q. And the surplus crude—surplus at that time at any rate—was stored in those tanks, was it?—A. Yes, sir.

Q. That, you say, extended down as late as 1892?—A. That is as late as I knew regarding it.

Q. At least as late as 1892?—A. Yes, sir.

Q. What was the course of prices through the period, say, from 1889 up to 1892?—A. The prices were advancing.

Q. They were advancing notwithstanding the fact that this quantity of oil was overproduced and stored?—A. Yes, sir; there was some advance even then.

Q. Can you tell me about how much oil the different companies you have been connected with have sold to the Buckeye Pipe Line in the period that you have been in the business?—A. I do not know definitely about that, but it will run not far from a million barrels.

11460 Q. Is that all from Ohio, or partly from Ohio and partly from Indiana?—A. Ohio and Indiana.

Q. Can you separate them and tell how much from one and how much from the other?—A. I should say that ⅞ of it was produced in Ohio.

Q. And about ⅛ in Indiana?—A. About ⅛ in Indiana. However, I have not the figures in my mind so that I could——

Q. Well, that is approximate?—A. Yes.

Q. Do you know about how much has been paid your different companies for that million barrels of oil, the total amount they have received for it from the Buckeye Pipe Line Company?—A. I could not answer that.

Q. Can you approximate it?—A. I think it would run $600,000 or $700,000.

Q. You spoke of the Exchange Oil Company. As I understand you, that went into business in January, 1900?—A. January, 1900.

Q. Did that purchase the plant of a going concern?—A. It did.

Q. What company?—A. It purchased what was known as the Palmer Oil Company.

Q. Where was their plant?—A. In Wood County, Ohio.

Q. Did the purchase carry with it certain oil leases?—A. Yes, sir; about 4,000 acres of territory or a little over that.

Q. What was the price paid for the whole of it by the Exchange Oil Company?—A. We paid $300,000 for it.

Q. And in 1904 you sold it, I believe?—A. We sold it.

Q. In operating the Exchange Oil Company did you make profits?—A. We did.

11461 Q. Were the profits distributed or were they otherwise used?—A. We used the profits from the operation of the company to reimburse us for the purchase of the property.

Q. You mean for this $300,000?—A. For the $300,000.

Q. Now, at the time you sold the property in 1904, how did the account stand as to the purchase money?—A. We had paid the purchase price and had a little surplus. I do not remember the amount, but it was a few thousand of surplus.

Q. You had paid off the $300,000 which the property cost?—A. Yes, sir.

Q. And what was the price for which you sold in 1904?—A. We sold it for $450,000.

Q. To whom or to what company during those four years did the Exchange Oil Company sell its crude oil?—A. To the Buckeye Pipe Line Company and the Manhattan Oil Company.

Q. Generally speaking, is it an easy or a difficult matter to make a connection with wells, as between the wells and a pipe line? Is it something that can be done quickly or does it take a great deal of time?—A. When the lines are in the vicinity it is done very quickly, but if it is off from the line they have to lay a line to you, and it takes some time, a few days, to get to you.

Q. Only a few days?—A. Yes, sir.

Q. Throughout the period since, say, 1890, what has been the fact as to whether you were able to have your well con-
11462 nected with more than one customer if you wished to?—A. In most of the territory where we have operated we had the privilege of one and sometimes two others than the Buckeye Pipe Line.

Q. Whenever a new well or a new district has been opened on property in which you were interested, have you had occasion to apply to the Buckeye Pipe Line Company for a connection with its line?—A. I have.

Q. What has been your experience? Have they complied with it or not?—A. They never failed to comply with it.

Q. Is that true without regard to distance?—A. Without regard to distance. However, I have never been any great distance from a line, but wherever I was they would connect it.

Q. Has there been any instance, in your knowledge, where the Buckeye Pipe Line Company has declined any crude oil that was offered to it?—A. I have never known an instance of that kind.

Q. Judging from your own experience and your observation there in Ohio and Indiana, has the production of oil, under the conditions which you have described, been a profitable business?—A. It has, when properly managed.

Q. What have you to say as to the methods of the Buckeye Pipe Line Company in handling its business with producers there?—A. Our business with them and of those with whom I have been associated has been satisfactory. We have had no difficulty with it.

Q. Have they been prompt in fulfilling their obligations?—A. They have.

11463 Q. You have found them reliable?—A. We have. Sometimes we have felt that they have been exceptionally prompt in doing their work.

Q. Has the general course of prices of crude oil in Ohio and Indiana during these years been stable? Has it been such as to make the business a stable business?—A. It has been regarded as a stable business and reasonably remunerative to the operator.

Q. Do you know whether the Buckeye Pipe Line Company has ever done anything to encourage the development of the territory there?—A. I do not know as to that, that they have ever made any special effort along that line.

Q. Do you know of any instances where the Buckeye Pipe Line Company has extended its gathering lines a considerable distance? I mean not your own business, but other business that you would know about, where they have extended their gathering lines a long distance to reach wells?—A. Yes, sir; I do. I know of one instance particularly where they laid it for several miles to take production.

Q. How much production was there in that instance, do you remember?—A. There was only a well there.

Q. A single well?—A. A single well.

Q. What inducement would there be to the pipe line company to lay connection to a single well?—A. It was a large well and the

opening of a new pool, and it was probably two or three miles from any other line. The well was quite an encouraging prospect for a pool of oil, and I know they made strenuous efforts to reach it in a short period, and did so.

11464 Q. What effect did their going there have upon the production in that pool, do you know?—A. The whole pool was developed in a little while and extended on for some miles beyond it.

Q. You mean other wells were sunk?—A. Yes, sir.

Mr. CRAWFORD. You may cross-examine.

Mr. KELLOGG. I move to strike out all the testimony as entirely immaterial to any issue in this case.

Cross-examination by Mr. KELLOGG:

Q. Mr. Case, when did you commence to sell to the Manhattan Oil Company?—A. I do not remember definitely, but I think it was somewhere about 1890.

Q. About 1890?—A. Yes, sir; I am not sure as to that date.

Q. Isn't it a fact that the Manhattan Oil Company was not in existence until several years after 1890?—A. I can not tell you as to that. I don't remember when it was. The principal part of our business with the Manhattan Oil Company was after 1900.

Q. After 1900?—A. Yes, sir.

Q. The Standard Oil Company bought the Manhattan about 1900, didn't they?—A. I can not say as to that.

Q. Well, the Manhattan Oil Company—all the oil is paid for by the same parties, isn't it, that pay for the Standard?—A. No, sir; that is, I do not sell to the same place.

Q. Well, are they holding themselves out to be an independent company?—A. They do an independent business.

Q. They do an independent business? They represent them-
11465 selves as not controlled by the Standard, do they?—A. I do not know as to that. They never made any representations to me whatever.

Q. Do you know to whom the Manhattan Company disposed of its oil?—A. I do not.

Q. You do not know anything about that? Did they ever tell you?—A. No, sir; I have never had any conversation with them at all.

Q. You understood it to be an independent company?—A. The Manhattan Oil Company, so far as our business is concerned, we have simply connected some of our wells to them and sold our product to them.

Q. Have you understood it to be a Standard company or an independent company?

Mr. CRAWFORD. I object to what the witness understood. That is not the question. If he knows, he may answer.

Q. Answer the question.—A. Originally we understood it to be an independent company.

Q. When did you understand it to have lost its independence, if ever?

Mr. CRAWFORD. I object to that as incompetent and immaterial. The witness should state what he knows, not what he understands.

A. I do not know when that was, but we have heard since that it was first controlled by other than the Manhattan.

Q. When did you first hear that, within the last year or so?

Mr. CRAWFORD. Same objection.

A. In recent years. I don't know just how long.

Q. Within the last year or so, wasn't it?—A. I don't know
11466 as I could say it was within the last year, or year or two or three years.

Q. It has been brought out in trials in court, hasn't it?

Mr. CRAWFORD. I object to that as immaterial.

A. I don't know as to that, Mr. Kellogg.

Q. Well, it is only recently that it has been understood to be controlled by the Standard, isn't it?

Mr. CRAWFORD. I object to that. He has not so testified.

Mr. KELLOGG. Well, enter your objections. I will stipulate that your objections may stand as to each question now, Mr. Crawford. I do not think it is necessary to take the time to put them in every time I ask a question.

Q. Now please answer the question.—A. Within the last few years, a short period.

Q. What do you mean by a short period—one or two years?—A. I don't know just how long it has been; it may have been two or three years.

Q. Prior to that time you understood it to be an independent company, did you, from all you heard in Ohio?—A. Yes, sir.

Q. Now what price, since 1900, in the North Lima field—that is in the North Lima field, isn't it—the Manhattan?—A. The Manhattan is in Indiana as well as in the——

Q. The Manhattan is in the North Lima field, isn't it?—A. Yes, sir; in the North Lima field.

Q. Now, in the North Lima field what price does it pay as compared with the Buckeye?—A. When we were selling to them, if I recollect right, we got 5 cents more a barrel for the oil.

Q. In the Indiana field they paid the same price, didn't they?—A. I do not remember as to that. I don't know as we sold them
11467 anything in Indiana.

Q. In the South Lima field they paid the same price as the Buckeye?—A. I am not familiar with that field.

Q. In the North Lima field they paid 5 cents more a barrel than the Buckeye?—A. Yes, sir.

Q. And always have since you have sold to them, haven't they?—A. I think most of the period of time that we sold to them we got 5 cents more.

Q. Now, there is an independent pipe line in the North Lima field, isn't there?—A. Why, I think there are two or three independent pipe lines.

Q. Small ones, aren't they, small compared to the Buckeye?—A. Yes, sir, small ones.

Q. The National Refining Company has a pipe line there, hasn't it?—A. I think they have. I am not sure about that. I have never done any business with them.

Q. The Paragon Refining Oil Company and the Sun Oil Company have small pipe lines in the North Lima field, haven't they?—A. I think they have.

Q. So there is a little competition there?—A. I don't know as to the extent of the competition.

Q. All the independent pipe lines put together are small as compared to the Buckeye, aren't they?—A. Oh, yes.

Q. They are very small?—A. Yes, sir.

Q. There are no independent pipe lines (I am speaking of pipe lines other than the Standard company's) in Indiana, that you know of, are there?—A. I don't know of any.

11468 Q. Now, when you run your oil into the pipe line, you run it into what is known as the gathering line, do you not?—A. They take it from our tank.

Q. They have gathering lines and trunk lines, haven't they?—A. Yes, sir.

Q. And you run your oil into the gathering line?—A. Yes, sir.

Q. And you get what is known as a credit balance on their books?—A. Yes, sir.

Q. And at the end of the month you can sell it?—A. Yes, sir.

Q. Or sell it whenever you want to?—A. Whenever we want to.

Q. You get a certificate. Who is the party that names the prices from time to time?—A. We get whatever prices the Joseph Seep Agency pays.

Q. That is it. The Seep Agency announces the price, doesn't it?—A. Yes, sir.

Q. That is the Standard Oil Company?—A. I think it is, as far as I know.

Q. And you take what price they announce?—A. Yes, sir.

Q. You haven't anything to say about it at all, have you?—A. No, sir.

Q. Never have had anything to say about it?—A. No, sir, except that we can sell to other pipe lines if we desire.

Q. If you could?—A. If we could.

Q. But if the other pipe lines did not reach your part of the community, you took what the Standard Oil Company announced?—A. Yes, sir; or held it in tank if we wanted to.

11469 Q. Have you ever known of a producer of oil to have anything to say about the price at all?—A. I don't know as he has ever been in a position where he could dictate.

Q. No. He couldn't say a word about it, could he?—A. No.

Q. It is absolutely in the hands of the Standard Oil Company to fix the price, isn't it?—A. I think they could take both ends of it if they wanted it.

Q. Now, during the early years in the field, the Standard had the only pipe line there, hadn't it?—A. Yes, sir.

Q. There were no other pipe lines in the Lima field?—A. Not in the North Lima field, that I knew of.

Q. Were there in the South Lima field?—A. I do not know about that territory.

Q. You are familiar with the North Lima? —A. Yes, sir.

Q. Now, about when was it that a competing line came in there?—A. I can't answer that.

Q. Some years afterward, wasn't it?—A. Some time after that.

Q. From 1887 down to and including 1894, oil never went above 48 cents a barrel, did it?—A. I do not remember now as to that slide of prices, just when it was and how far it went; I can't call it to memory.

Q. It averaged from 15 to 30, and 36, and 40, and 47, and 48, did it not?—A. Yes, sir; it went from along about 32½ to 47½ for some little time.

Q. During those years?—A. Yes, sir. Just how high it went I could not say.

Q. Now, during those years, for several years, the price was
11470 down to about 15 cents, wasn't it, the average price?—A. Yes, sir.

Q. Say for 1887, 1888, 1889, along there?—A. About that period.

Q. About 15 cents a barrel. Didn't the Standard buy large amounts of crude oil and store hundreds of thousands of barrels during that time?—A. I think they did.

Q. Oil can be stored and kept for years, can't it?—A. I think it can, other than evaporation.

Q. And it bought many millions of barrels and stored it during that time, didn't it?—A. They bought a large quantity.

Q. It also bought or obtained a large number of leases on oil lands during that time, didn't it?—A. They did.

Q. In fact, the Standard——A. I want to say——

Q. Well, you knew in a general way, didn't you, that it acquired leases?—A. That the Ohio company did.

Q. Well, that is the Standard Oil Company, isn't it?—A. I do not know, but it is suspected.

Q. We will assume it is. I won't ask you to say, but it appears in this case to be the Standard Oil. There is no dispute about it. Assuming it to be a Standard Oil Company, the Standard acquired a large number of leases, didn't it, all over that North Lima field?—A. It acquired a good many leases.

Q. Isn't it the biggest producer of oil in the North Lima field?—A. I could not say that they were the largest producer. They may have been. But they were a large producer.

Q. I mean the largest single producer. The production of the North Lima field increased from year to year down to about
11471 practically the present time, didn't it?—A. No, sir. I think it has been on the decrease for at least ten years.

Q. On the decrease for ten years?—A. Yes, sir.

Q. The geological reports publish the production of every oil field every year, do they not?—A. I think they do.

Q. Now, it appears by the geological reports that from 1896 down to 1905 (that is the last I have here) the production varied from 25 millions (I will give you the round figures) in 1896, to 22 millions in 1905, and it varied up an down between 20 millions and 24 millions during those years, some of the big years being 1903 and 1904.—A. What territory are you covering?

Q. The Lima-Indiana field.—A. That is different. I did not refer to that.

Q. You were not speaking of that?—A. No, sir. I am just speaking of the North Lima.

Q. Well, I haven't that separate.—A. I thought you were speaking of the Lima field.

Q. Now, do you know of any reason why the oil producer should not make a reasonable income?—A. I do not.

Q. Some of them, I suppose, lose money, don't they?—A. They do.

Q. The risk of the business, I suppose, drilling wells, and investing is quite large in the producing field, isn't it?—A. It is not so much of a risk by a regular producer as it is by one who operates and is not familiar with the business.

Q. But there is more risk, I suppose, in producing oil than there is in buying it from the producer?—A. I think there would be.

11472 Q. As a general thing, the Standard buys quite a large part of the oil it uses, does it not?—A. I do not know what the percentage would be, as to what they produce.

Q. There are a great many small producers of oil, are there not?—A. There are a good many.

Q. When did the Standard begin to refine oil at Lima?—A. I don't know; I don't remember definitely about that, but I think it was somewhere around about 1890.

Q. 1890?—A. Yes.

Q. About three years after the field began to produce?—A. It was not far from that.

Q. The Standard pipe line—the Buckeye—was connected with its Pennsylvania pipe line, was it not?—A. Connections were built during this period of time.

Q. The Standard also had refineries at Cleveland, and had had for many years, hadn't it?—A. I have heard it said they had.

Q. And the Buckeye pipe line runs to Cleveland, doesn't it?—A. It had to be built from that field.

Q. Oh, it had to be built from that field; yes. You don't know that during those three years some of this oil was not refined in the Pennsylvania refineries or in the Cleveland refineries of the Standard, do you?—A. I have no knowledge on that subject.

Q. You say you sold to some other customers besides the Manhattan and the Standard. What other customers?—A. We sold some oil at one time to the Sun Oil Company.

Q. The Sun Oil; yes. That is a small pipe line, isn't it?—A. Yes, sir; a small pipe line.

11473 Redirect examination by Mr. CRAWFORD:

Q. You do not pretend to have any knowledge in regard to the Manhattan Oil Company, do you, beyond what you have read in the newspapers or heard?—A. No, sir; I have no personal knowledge of any of their operations other than current report among the operators.

Q. What you have read in the newspapers and heard in gossip?—A. Yes.

11474 H. R. KLAUSER, called on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Klauser, where do you live?—A. I live at Toledo, Ohio.

Q. You are an oil producer, aren't you?—A. Yes, sir.

Q. How long have you been interested in oil production?—A. About fifteen years.

Q. That would be from 1893?—A. About 1893; yes, sir.

Q. And in what field?—A. In the Ohio field, North and South Lima, and also the Illinois field.

Q. Have you done business there in your own name?—A. Sometimes in my own name, sometimes in connection with other companies or partnerships, in different ways and manners.

Q. You were present and heard Mr. Case testify in this case, were you not?—A. Yes, sir.

Q. You heard him testify in regard to the ordinary course of business, according to which the oil is taken from the wells into the producer's tank and then delivered to the pipe-line companies into their lines at the wells?—A. Yes, sir.

Q. Has that been the course of business in your experience also?

Mr. KELLOGG. That has already been testified to by some of the officials.

A. Well, he might have been a little more explicit in stating how they give run tickets. The gauger comes in on your lease and he meets your pumper. They unlock the valve. First, they
11475 gauge it, they measure the tank, and that is all made a note of. One of those tickets is given to your producer or your pumper, which is a receipt for that oil. The other ticket is mailed on to the Buckeye Pipe Line Company. From that ticket they distribute that oil and place it on the books of the company to the credit of the individual to whom that oil belongs, and it is subject there to sale the same as a bank account is subject to check. Sell it every day in the week or any time you want to. You immediately get prompt payment for whatever happens to be to your credit on their books.

Q. To what company have you sold most of the crude that you have produced?—A. I have sold all my oil in that length of time to

the Buckeye Pipe Line Company; that is, in the Ohio field, and to the Ohio Oil Company in the Illinois field.

Q. Can you state in round figures how much you have sold to the Buckeye Pipe Line Company?—A. To the Buckeye Pipe Line Company I have sold, say, approximately, 200,000 barrels of oil that has been run individually to my credit.

Q. Can you state approximately how much you have received for it?—A. About $160,000; in that neighborhood.

Q. And then, in addition to that, you have done business also in Indiana, have you?—A. In Indiana, very little; not very much, but mostly in Illinois outside of that.

Q. When you began in 1893, what was the condition in the Ohio field as to the quantity that was being produced there?—A. There were large quantities of oil being produced; possibly, sometimes, I think, more than what was consumed.

Q. More than what?—A. More than what was consumed.
11476 We bought, oh, hundreds and hundreds of acres of farm land there, and they built iron tanks there. I have gone through; I have seen them; I have gone right through; of course, I don't know the number of them, but I should judge I have seen two or three hundred of them, maybe more than that.

Q. You say they bought large farms. Who bought the farms?—A. The Buckeye Pipe Line Company, on which to erect these tanks.

Q. You don't mean to drive wells on?—A. No; to erect storage tanks on.

Q. Generally speaking, was the production increasing at that time?—A. Yes, sir; because they had to keep on building these tanks to meet the increased production.

Q. Do you remember what the price was when you began?—A. 37½ cents.

Q. For a barrel that was?—A. Yes, sir; for a barrel.

Q. 42-gallon barrel?—A. 42-gallon barrel, as I understand.

Q. And how long did the production in the Lima field continue very large after that?—A. Oh, I should think for the next ten years.

Q. What was the course of prices after you went into the business?—A. The general tendency of prices was upward all through.

Q. Did oil ever sell as low as 37½ cents after the first year that you were in business?—A. No. I never sold any oil, although that was the price; I never sold any at that price. It went up immediately after I went in the business.

Q. Notwithstanding this overproduction of crude, then, the
11477 price continued to advance, did it?—A. That was the condition of affairs; yes, sir.

Q. Generally speaking, the course has been upward, hasn't it?—A. Yes, sir.

Q. The prices at the present time, I understand, are around a dollar, are they?—A. $1.04 for North Lima and 99 cents for South Lima.

Q. What has your experience been in regard to the readiness of the Buckeye Pipe Line to connect its lines with any wells?—A. They have always been very prompt.

Q. Always what?—A. Always very prompt, indeed. Whenever we have asked them to connect up anything we had they were always very prompt in connecting up.

Q. What distances have you known the Buckeye Company to extend its lines to wells?—A. Oh, oftentimes three or four miles; and I think in one case 4½ miles, about that distance.

Q. What has been the possibility of your disposing of your oil to others than the Buckeye during those years? Could you have done so?—A. Oh, yes.

Q. Have there been other concerns ready to take oil?—A. Yes. They have even solicited my business, but I told them I was satisfied with the treatment I was getting from the Buckeye.

Q. How serious a matter would it have been to change from the Buckeye to one of these other concerns at any time?—A. What do you mean by serious? In what way?

Q. What time would it take, and what cost, etc.?—A. About 24 hours.

11478 Q. So that your continuance with the Buckeye Pipe Line Company has been voluntary, has it?—A. Yes, sir.

Q. Have you found the producing of oil during these years a profitable business?

Mr. KELLOGG. That is objected to as immaterial.

A. I have; yes, sir; I have been successful in the business.

Q. What do you say about the methods of the Buckeye Pipe Line Company in dealing with its customers?—A. My experience, individually, has taught me that it was very satisfactory.

Q. Have you found them prompt?—A. Found them prompt, very prompt; unusually so.

Cross-examination by Mr. KELLOGG:

Q. What year did you commence—1893?—A. In 1893; yes, sir.

Q. The price was 37½ cents?—A. 37½ cents.

Q. It has not continued to go up every year since, has it?—A. On an average, I should say the general tendency of the oil since that time has been upwards.

Q. I notice by the reports of the Geological Survey and the prices published by the Geological Survey that the average price in 1895 was 71¾ cents a barrel, in 1896 it was 66¾ cents, and in 1897 it went down to 48 cents a barrel.—A. That covers the whole of the United States, doesn't it? That does not cover this field.

Q. No, sir; that covers the Lima field alone.

Mr. CRAWFORD. I object to any question based upon average prices. The witness should be interrogated as to actual prices.

11479 Average prices are not always actual prices.

Q. All the prices for the year and the amount of oil produced would produce an average price, wouldn't it?—A. No, sir.

Q. Why not?—A. Because that high price maybe would only last a week or ten days.

Q. If you take all the oil sold and the prices of all the oil sold and divide it you would get the average price of all the oil bought, wouldn't you?

Mr. CRAWFORD. I object to that because it does not appear that that is the way the average price is arrived at. There is nothing to show how those average prices are produced or obtained.

Mr. KELLOGG. The average prices are obtained by taking all the oil sold and the prices.

Mr. CRAWFORD. You say so, Mr. Kellogg.

Q. Now, isn't it a fact that in 1897 the prices went down?—A. It declined; yes, sir.

Q. They declined in that year, didn't they?—A. Yes, and went up again.

Q. And went up again?—A. Yes.

Q. And then it went down again, didn't it?—A. Since 1897, yes.

Q. After that it went down again?—A. Yes.

Q. After going up?—A. Yes.

Q. Now, after 1897 the stocks on hand, as published from time to time, showed a decrease every year nearly, didn't they,
11480 down to after 1900, or during the year 1900?—A. I have not followed that course.

Q. You have not followed it?—A. No; I used to follow it, but I have forgotten it.

Q. You didn't mean, then, there had been an overproduction all the time, did you?—A. That is my opinion; yes, sir. There was at that time.

Q. Oh, 1893, 1894, and 1895?—A. Yes.

Q. But you don't mean during all these years there has been an overproduction?—A. Well, not in that particular field maybe. Still that may be influenced——

Q. Or anywhere else, has there?—A. Yes.

Q. Where?—A. I think in the Illinois field, and I think in Oklahoma.

Q. Well, that wasn't influenced until 1906, was it?—A. I said since then.

Q. Oh, since 1906?—A. Yes.

11481 LOUIS BLAUSTEIN, recalled, and his cross-examination resumed, as follows:

By Mr. MORRISON:

Q. Within four months after you acquired the Southern Oil Company oil went up, didn't it, in Richmond 3½ cents a gallon?—A. I don't remember it, Mr. Morrison, what length or how much it went up.

Q. The Southern Oil Company was doing a wholesale business, was it, in Richmond?—A. To stores; yes, sir.

Q. Do you know what the prices were at Richmond at the time that you acquired the Southern?—A. I don't remember that.

Q. They were very low, weren't they?—A. I could not say what they were.

Q. Weren't you selling prime white oil for 4¾ cents?—A. I don't remember, Mr. Morrison, what we got for oil at that time. It has been too long for me to remember.

Q. You have no recollection about it at all?—A. I don't remember.

Q. You would regard 4¾ cents for prime white oil as a pretty low price, wouldn't you?—A. I don't remember that we got 4¾ cents at that time.

Q. I say if you got that, you would regard it as pretty low?—A. It all depends on what the crude oil market was at the time. I am not in a position to tell whether it was low or high.

Q. The only reason, as far I can discover from your testimony, that Warner Moore sold out the Southern to you or to the Argand was that his manager there, Mr. Warden, was a dissipated
11482 man?—A. That is what he told me.

Q. That was his only reason?—A. I suppose he did not make any money.

Q. That was the reason he didn't make any money, wasn't it?—A. I could not say. He told me that he hasn't made any money for the last couple of years.

Q. How long had the Argand been running there?—A. About three or four months.

Q. He attributed his failure to make money, did he not, to the fact that his manager there was a dissipated man?—A. He told me he didn't make any money for the last couple of years.

Q. That does not answer my question. Just read the last question to the witness.

The reporter read the question as follows: "Well, he attributed his failure to make money, did he not, to the fact that his manager there was a dissipated man?

A. I believe he did.

Q. Did he have anything to do with conducting the business himself?—A. I could not tell you that.

Q. He lived right there, didn't he, in Richmond?—A. He lived in Richmond; yes, sir.

Q. That was the only business he had, wasn't it?—A. Oh, no; he was interested in half a dozen other businesses.

Q. That was one of his branches of business?—A. Yes, sir; he told me that he didn't take much care of that business, he left it to Warden.

Q. Were you ever at the office of the Southern Oil Company before you bought them out?—A. Yes, sir; I believe I was.

11483 Q. Did you know a man by the name of Taylor, a clerk in that office?—A. I don't remember that.

Q. Did you offer him, or any clerk in the office there, $50 if he would try and induce them to sell the Southern to you?—A. I don't remember that.

Q. How many times were you there?—A. I can't state. I was there, but I don't know how many times.

Q. What did you offer?—A. I don't remember I ever offered anything.

Q. Don't remember that?—A. No, sir.

Q. How many conversations did you have with this man Taylor?—A. I don't remember that, if I ever had any conversations with him at all. I may; I don't know.

Q. What was your business there at the office?—A. That was at the time I and Mr. Moore were about coming to terms. He told me to come there; come to see him.

Q. And you went there for that purpose?—A. That is what I understood, yes.

Q. Why did not Mr. Moore discharge this driver and put a sober man on there to run the business, if that was the cause of his losing money?—A. He was no driver.

Q. Well, manager?—A. You will have to ask Mr. Moore that.

Q. Didn't he tell you?—A. No, sir.

Q. That would readily suggest itself to you, wouldn't it, if you had been in Mr. Moore's place?

Mr. CRAWFORD. I object to that as immaterial.

A. I can't run Mr. Moore's business. It is for him to do that.

11484 Q. I am not asking you for that. I am asking if that is not the way you would handle that sort of a situation?—A. I don't know how close their connection was.

Q. What do you mean by that?—A. If he could discharge him or he could not; I don't know that.

Q. You don't know whether he could discharge him or not?—A. No.

Q. If he could discharge him, that would be about the first thing he ought to do, don't you think so?—A. It is up to Mr. Moore to answer that.

Q. That is what you would have done, isn't it?

Mr. CRAWFORD. I object to that as immaterial.

A. I don't know whether I would or not.

Q. You would not have sold out your business, would you, because you had a drunken manager? You would have got rid of your manager, wouldn't you?—A. Maybe the business did not pay.

Q. Well, it didn't pay. You said the reason was that his manager was a drunkard.—A. He told me he had been losing money for the last couple of years.

Q. Oh, you have told us that half a dozen times, and you have given us the reason.—A. I am giving you the same reason over again.

Q. I know that. But if you were in charge of a business and had a manager under you, and that manager was not attending to his business because he was drinking, you would get rid of that fellow pretty quick, wouldn't you, and put somebody else in there?

11485 Mr. CRAWFORD. Wait a moment. I object to the question as immaterial and as incompetent, as asking for an opinion. The question is what this witness knows, not what his opinion is or what he would do in a speculative case.

A. Yes; if I had knowledge of the business myself, but Mr. Moore didn't. Warden was the main oil man.

Q. Was Warden the only man that was capable of running the oil business?—A. For Moore, yes, sir.

Q. Nobody else could run that business?—A. That is all he had there.

Q. Yes; but there were other men, weren't there, that understood the oil business?—A. That was for Mr. Moore to look out, not for me.

Q. I am not asking you that. I am asking you whether there were not plenty of men that could have been put in there to manage that Southern Oil Company?—A. I don't know if there were or not. I am not in a position to tell you that.

Q. You don't know?—A. No, sir.

Q. He went on the principle, then, that it was better to sell the business than it was to change managers?—A. I don't know his principles.

Q. That is the way he acted, wasn't it?—A. He offered to sell, and we bought him out.

Q. And he gave you his reasons for wanting to sell?—A. That he has been losing money.

Q. And he gave you the reason for losing money?—A. No, sir; he simply told me he is losing money.

Q. Oh, that is all. He did not tell you anything about
11486 Warden being a drunkard?—A. Oh, yes; he did.

Q. Did you operate at Harrisonburg, Virginia?—A. The Southern Oil Company; yes, sir.

Q. You operated there under the name of the Southern, did you?—A. Yes, sir.

Q. How long were you running the Southern there?—A. About a year or so.

Q. Were you running it at the same time in Richmond?—A. Yes.

Q. Did you run it at any other place at the same time?—A. If you mention the name of the place, I can tell you better.

Q. Don't you remember whether you were running the Southern Oil Company at any other place when you were running it at Richmond and at Harrisonburg?—A. We were running it all through the valley of Virginia.

Q. You ran it at Mount Jackson and Edinburgh, did you?—A. Yes, sir.

Q. And all over the valley of Virginia?—A. Yes, sir.

Q. What did you operate at Harrisonburg for?—A. Mr. Powell told me that they have got a salesman there by the name of Greathead; that he is not attending to his business; but he understands—he says, "You go up there and see what troubles are there, why he is

not selling any more oil," which I did, and reported to Mr. Powell. I find that the conditions are much as I did in Burlington.

Q. What was the trouble at Harrisonburg?—A. The man would neglect his trade; did not call properly on the customers.

11487 Q. Anything else?—A. That is all I can think of. That is enough, I think.

Q. You reported that to Mr. Powell?—A. Yes, sir.

Q. He did not discharge this man, did he, that was neglecting his duty down there?—A. I believe he did, after some time.

Q. How long afterward?—A. I could not tell you that.

Q. A year or so?—A. I could not tell you, because I was not there long enough to tell you, but I heard that he——

Q. You were there a year and a half?—A. I was not there. I appointed a broker there by the name of James Snell & Company. I was not there but five days in my life.

Q. Did you go back aferward to see how he was doing?—A. I was there about four or five times.

Q. Did you go back after you had been there those four or five times?—A. I don't believe I did.

Q. How long was it between your first visit to Harrisonburg and your last one?—A. Oh, about a month or three weeks.

Q. Then you started in some grocer there, did you?—A. No, sir.

Q. Who?—A. I started a grocery there.

Q. You started in with some grocer as your agent there?—A. Yes, sir; I have appointed James Snell & Company as my agent.

Q. Why didn't they sell as James Snell & Company?—A. They did.

Q. I thought you said you operated there as the Southern?—A. Well, we billed it to James Snell as the Southern, and the barrels were stenciled the same as they were in Burlington,

11488 "James Snell, Eureka Oil."

Q. Well, then he carried on the business under the name of the Eureka Oil Company, or the Southern Oil Company?—A. He used to tell them it is the Southern Oil Company's oil, but he was responsible for the bills himself.

Q. Where did he get his oil?—A. From the Southern Oil Company, in barrels, from Richmond.

Q. From Richmond?—A. Yes, sir; sometimes from Baltimore.

Q. They shipped it down there to Richmond, and then you shipped some of it over here to Harrisonburg?—A. No, sir; I believe he got one shipment from Richmond.

Q. The rest he got from the Standard Oil Company at Baltimore?—A. From Baltimore, and he also got some direct from Parkersburg, I believe.

Q. In what name was it shipped to him from Baltimore?—A. I can't tell you that. I did not receive the oil. I have never seen the bills of lading.

Q. Did you tell Snell that you were connected with the Standard?—A. Snell knew all about it.

Q. I am not asking you what he knew. Did you tell him?—A. He never asked me.

Q. You never had any conversation on that subject?—A. No, sir.

Q. How did he know then that you were connected with the Standard?—A. From the trade in general.

Q. How is that?—A. It was a matter of record that the Argand Refining Company bought out the Southern, and the Argand Refining Company——

11489 Q. A matter of record where?—A. Over in Virginia.

Q. Whereabouts in Virginia?—A. In Richmond.

Q. You think that would notify Snell down at Harrisonburg, do you?—A. They are getting the Richmond papers there every week. I don't see why they should not.

Q. That is the reason, is it, why you say that Snell knew that you were connected with the Standard?—A. He did not ask me, but I suppose he knew it.

Q. You told him you were connected with the Southern, didn't you?—A. That is what I was.

Q. You told him that, didn't you?—A. The Southern Oil Company I represented. I bought the name and the good will of the Southern Oil Company for the Standard Oil Company.

Q. You told him that you had bought it, didn't you?—A. He knew that.

Q. How did he know it?—A. He told me so.

Q. How did he find it out?—A. Why, he heard from his salesmen on the road. He used to travel, and met their men from Richmond, and they used to tell him.

Q. Used to tell him what?—A. That the Argand Refining Company was the Standard Oil Company, and they bought out the Southern Oil Company.

Q. Did you tell anybody else in Harrisonburg, or did you tell anybody?—A. It was not necessary. They all knew it.

Q. Everybody knew it?—A. I suppose so, I did not drum up the trade there. I did not come in contact with any of them.

Q. Did you tell any of them there that it was not connected with the Standard, at Harrisonburg?—A. Nobody asked me.

11490 Q. I am not asking you that. Did you tell anybody?—A. How can I tell if a man did not ask me?

Q. I don't know.—A. Well, neither do I.

Q. Can't you answer that question?—A. I can answer the question.

Q. It is a very simple one. Did you tell anybody in Harrisonburg that the Southern was not connected with the Standard?—A. I did not tell——

Q. Answer my question.—A. No, sir; nobody asked me for that.

Q. Now you have got to it. Did you tell them that it was not connected with trusts?—A. I did not consider the Standard Oil Company a trust.

Q. What is that?—A. I did not consider the Standard Oil Company a trust. I was not told that it was a trust.

Q. I am not asking you what you considered the Standard Oil Company. I am asking you if you told anybody in Harrisonburg that the Southern was independent of the trusts, or of any trust?—A. I don't remember telling anybody.

Q. Did you tell anybody that it was independent?—A. If a man asks me if I am independent, I ask him his opinion—what he thinks I am. If he tells me I am the Standard Oil Company, I say, "That is all right; well, you know it then."

Q. You always answered in exactly that way, did you, whenever they asked you?—A. Yes.

Q. Did anybody ask you in Harrisonburg?—A. I believe they did. I don't remember. It has been so long.

Q. That question was asked you wherever you went, wasn't it?—A. Why, I don't think so; no. They all knew it without asking me.

11491 Q. You think, however, they asked you that in Harrisonburg?—A. They may have asked me; yes.

Q. Did you write any letters or postal cards from Harrisonburg in which you said the Southern was independent?—A. I may. If I see the postal card I can tell you better.

Q. No. Did you write any letters?—A. I could not tell you yes or no. I don't remember.

Q. You may have written some?—A. Yes; I may.

Q. Was the Southern independent?—A. According to my opinion they were.

Q. Was your representative at Harrisonburg Snell, Berry & Company?—A. My representative was James Snell & Company.

Q. That is the same concern, isn't it, Snell, Berry & Company?—A. I really don't know. When I engaged Mr. Snell it was James Snell & Company; they may have consolidated after I left there.

Q. Did you direct them to sell in any particular territory?—A. I don't believe I did.

Q. How is that?—A. I don't believe—I can't remember that.

Q. Did you direct them not to sell in Cooper Bros.' territory?—A. I can't remember that; I may.

Q. What was your reason for that?—A. Because we did not want to come in contact with Cooper's trade.

Q. Why not?—A. Because the freight rates would be—he could not compete with Cooper on the freight rates.

Q. He could not compete with them?—A. No, sir.

Q. You were afraid he would lose money if he attempted to compete with Cooper Bros.?—A. No; I expected to pull into

11492 Winchester myself. Winchester was a good shipping point, and I could take care of that point myself; that is, give him a commission on my oil.

Q. For that reason you did not want Snell to sell up there in that territory?—A. No, sir.

Mr. CRAWFORD. Where was Snell?

WITNESS. In Harrisonburg, about 70 miles from Winchester.

Q. You had not started up there yet at Winchester, had you?—A. I don't remember what time it was.

Q. Do you remember writing Cooper Bros. about your agency at Harrisonburg?—A. I don't remember that. I may have.

Q. Do you remember writing to Cooper Bros. about having them act as your agents?—A. I may. I was looking for somebody around there.

Q. Do you remember anything about it?—A. I may.

Q. Did you represent to Cooper Bros. that you were independent?—A. The Southern Oil Company.

Q. No; that is not the question, sir. Did you represent to Cooper Bros. at any time that you were independent?—A. I gave him a card——

Q. That the Southern was an independent company?—A. I gave him a card of the Southern Oil Company, whom I represented.

Q. Will you answer my question? Did you ever represent to Cooper Bros., in writing or otherwise, that the Southern was an independent company?—A. I may. I have considered myself to be independent.

11493 Q. Oh, you considered you were independent?—A. Because I belonged to the Standard Oil Company.

Q. And as you considered yourself independent, why, you may have written that?—A. I may have told him; yes.

Q. And you may have written him, may you not?—A. Yes, sir; I considered the Standard Oil Company the only independent oil company in the country, acording to my view, my belief.

Q. And during all the time you were operating these companies you entertained that same opinion about the Standard, didn't you?—A. I always did have the opinion about the Standard Oil Company being independent. I can explain to you my opinion if you want me to, Mr Morrison.

Q. And your opinion was that the Southern was independent?—A. Because they belonged to the Standard.

Q. It was independent of the Standard, too, wasn't it?—A. No, sir; I never said independent of the Standard; I said independent of the trusts, maybe. I may have said that.

Q. Oh, yes; you may have said that?—A. I never considered the Standard to be a trust.

Q. You never understood the Standard to be a trust?—A. No, sir; I was never told——

Q. And you always understood it to be one of the independent companies?—A. Yes, sir. I ask to explain to you, please.

Q. And you gave the people that you talked to to understand that, didn't you?—A. They all knew it. I don't have to explain it.

11494 Q. All knew that the Standard was independent?—A. Well, they knew that the Southern Oil Company was the Standard Oil Company.

Q. No; I am talking now about the Standard.—A. Yes, sir; I used to explain that the Standard are not a trust, that they are independent; yes, sir.

Q. And did you explain that to Cooper Bros.?—A. I believe I did; I don't remember.

Q. You don't remember?—A. No, sir.

Q. But you rather think you did, don't you——A. I could not say.

Q. Explain to Cooper Bros. that the Standard was an independent company?—A. I could not say; I may have told them that.

Q. You believed that yourself?—A. Oh, yes.

Q. And believing it yourself it is quite likely you said it?—A. Believing that they are independent; yes.

Q. It is quite likely you said that in Durham and everywhere else, isn't it?—A. I may; I can't recollect.

Q. So that whenever anybody asked you if you were independent you would say yes, because you believed you were. That is right, isn't it?—A. I believe the Standard Oil Company were independent; yes, sir.

Q. And for that reason you believed that the Eureka was independent?—A. That they belonged to the Standard Oil Company.

Q. Well, you believed them to be independent, didn't you?—A. I believed it belonged to the Standard Oil Company.

Q. And you believed the Southern to be independent?—A. Yes, sir; I took the same view.

11495 Q. Took the same view of it?—A. Yes, sir. Let me explain you my view, Mr. Morrison, please, why they are independent. You may consider it, too, that they are independent.

Q. Before you bought the Southern, I assume then that it was not an independent company, was it?—A. I could not tell you that.

Q. It was not connected with the Standard until after you bought it, was it?—A. I don't know. I know they were doing business there as the Southern Oil Company. They may have bought their oil from the Standard Oil Company for all I know. I don't know that——

Q. Did you regard them as an independent company or as a trust company before you bought them?—A. I regarded them as a company——

Q. Well, which, independent or a trust?—A. As a company of jobbers. I regarded them as jobbers, buying their oil——

Q. Oh, well, we all understand that, that they were a company. I have not asked you anything about that. I am asking you now whether you understood them to be connected with the trusts or whether you understood them to be an independent company when you bought them out?—A. You see, I don't understand you. You say "the trusts." Who do you mean?

Q. Will you answer my question?—A. I can't answer until you explain to me.

Q. Do you say that you are not intelligent enough to answer that question?—A. I don't say so; but you are calling "the trusts," and I don't recognize them as a trust. I can't answer that.

11496 Q. Are you incapable of answering my question as I have put it to you?

Mr. CRAWFORD. I object to that question on the ground that the question to which the counsel has reference is obviously obscure in its meaning, and as for intelligence, I am frank to say I don't know what it means, and I object to it upon that ground. I object to it on the ground that it should be made plain what it means.

Mr. MORRISON. Read my question.

The reporter read the question as follows: "Q. I am asking you now whether you understood them to be connected with the trusts or whether you understood them to be an independent company when you bought them out?"

A. I understood them to be a company buying their oil and selling it again with a profit.

Q. Did you understand them to be independent?—A. I never asked them. I have never inquired.

Mr. CAMPBELL. Did you have any understanding on it at all?

Q. I am not asking you that question. Did you understand them to be independent when you bought them out?—A. I have no idea on the subject. I didn't know.

Q. You didn't know?—A. No, sir.

Q. Did the Southern Oil Company have any letter heads that you used to write your letters upon?—A. Yes, sir; we used to use the Southern Oil Company's letter heads, I believe.

Q. Didn't you have some made out after you got to be agent?—A. I believe we did.

11497 Q. Who got them up?—A. I believe I did myself.

Q. You got them up, did you?—A. Yes, sir.

Q Had your name put on there, L. Blaustein, as agent?—A. I may have. I don't remember now. I have not seen one for a long time.

Q You got up the letter heads that were used there, didn't you?—A. I believe I did.

Q. Did the Southern Oil Company refine oil?—A. The Standard Oil Company did.

Q. I did not ask you that question, sir, at all. I asked you if the Southern Oil Company was a refiner of oil.—A. The company whom I represented were refiners of oil.

Q. Will you answer the question? Was the Southern Oil Company a refiner of oil?—A. I don't know that. I can't answer you that question.

Q. You don't know whether they were or not?—A. I do not.

Q. You purchased this company, didn't you, from Warner Moore?—A. Yes, sir.

Q. Did you buy any refinery?—A. No, sir.

Q. What did you buy?—A. I bought a plant.

Q. What did the plant consist of?—A. Oh, some tank wagons, and ground, and buildings, and good will, and the name.

Q. And that was all there was to what you bought, wasn't it?—A. Oh, some oil barrels.

Q. That was all you bought, wasn't it?—A. That was all I bought.

Q. Did you refine any oil, or did the Southern refine any oil while you were connected with it?—A. Before I bought them
11498 they didn't; no, sir.

Q. Oh, I am talking about while you were connected with it.—A. Yes, sir; while I was connected with the Southern Oil Company, after we bought them out, we used to refine oil—the Standard Oil Company.

Q. I am not talking about the Standard Oil Company.—A. Yes; that was the Southern Oil Company.

Q. I have not asked you a word about the Standard Oil Company, and you know it, Mr. Blaustein, don't you? I am asking you about the Southern. Did it refine a gallon of oil while you were with it?—A. I don't know, sir; I don't think so.

Q. You know that it didn't, don't you? Why not get to it and answer the question?—A. I know the Standard Oil Company's money——

Q. I have not asked you about the Standard Oil Company.—A. ——was there, and they refined oil.

Q. I have not asked you about that, have I? You are trying to evade, aren't you?—A. I am not. I will answer you.

Q. Just answer my question. Did the Southern Oil Company refine a gallon of oil while you were connected with it—A. After I bought out the Southern Oil Company?

Q. Yes.—A. I have reported my sale to the Standard Oil Company, and the Standard Oil Company——

Q. Will you answer my question now, or won't you? I am not gong to fool away time if you are determined not to answer.—A. I don't think they have, but the Standard Oil Company did.

Q. Who is asking you about the Standard Oil Company? Haven't you got that through your head yet?—A. No, sir. I am
11499 willing to tell you who they were.

Q. You are willing to tell me that the Standard refined oil?—A. Yes, sir; it was their money I was doing business with.

Q. I knew that long before I knew you, Mr. Blaustein. Now, I will come back and put this question and give you a chance to answer it fairly. Did the Southern Oil Company refine a gallon of oil while you were connected with it?

Mr. CAMPBELL. Now, one moment, Mr. Blaustein, that is objected to. The witness has already stated that after the Southern Oil Company was purchased by the Standard Oil Company it became a part of the Standard Oil Company. The Standard Oil Company did do a refining business, and therefore the Southern Oil Company, as part of the Standard, also had a refinery.

Mr. MORRISON. Now, Mr. Campbell, if you have sufficiently instructed him so that he can answer as you want him to——

Mr. CAMPBELL. He has answered that question a dozen times.

Mr. MORRISON. ——I will put the question to him again. Now, repeat this question to him again and let us see what he is going to say about it.

WITNESS. I will tell you the same thing, Mr. Morrison.

(The reporter read the question.)

A. The Southern Oil Company direct had no refinery; no, sir.

Q. Well, did they indirectly?—A. Yes, sir.

Q. How indirectly?—A. The Standard Oil Company.

Q. The Standard Oil Company had many refineries, had they not?—A. But the only refinery I have used to draw my supply for the Southern Oil Company was only one or two.

11500 Q. So that because the Southern Oil Company got its oil of the Standard and the Standard refined it, you say that indirectly the Southern refined it, do you?—A. Yes, sir.

Q. Now, we understand each other. The Southern Oil Company never owned a refinery to your knowledge, did it, either before you bought it or afterwards?—A. The name didn't, but the capital did.

Q. How is that?—A. The name did not, the Southern Oil Company. The name did not have any refinery, but the money that was involved in the Southern Oil Company had a refinery.

Q. Whose money was that?—A. The Standard Oil Company's.

Q. Then before you bought it, did the Southern refine oil or ever have a refinery?—A. I have no knowledge of that.

Q. It did not have any when you bought it, did it?—A. No, sir.

Q. (Showing witness paper.) Is that one of your letter heads? Just look at the letter head. I am not asking you——A. Yes; it is my letter head.

Q. That is one that you got up yourself, isn't it?—A. The letter head; yes, sir.

(Paper marked Petitioner's Exhibit 937.)

Q. You used this in your office there to write letters on pertaining to the business of the Southern Oil Company, didn't you?—A. I suppose so.

Q. Who wrote the letters that were written there in your office?—A. I don't remember. I had different boys down there.

Q. You had clerks, did you, who sometimes wrote in your absence?—A. I don't know; I can't say.

11501 Q. Can't tell whether they did or did not?—A. No, sir.

Q. Do you remember writing a letter to Cooper Brothers?—A. I can't say. If I will read the letter I can tell you.

Q. You have no recollection without reading the letter?—A. I can't remember. I may have written him more than one; I don't remember that either.

Q. Now I notice you say here on this letter head, "Works corner of Second and Stockton street, Manchester, Virginia."

Mr. CRAWFORD. Wait a moment. I object to the question, because it is attempting to read into the record part of a paper that has not been offered in evidence.

A. That is what I mean by the name of works. All our men were working with our horses and wagons, the plant.

Q. Oh, that is what you call the works, eh?—A. Yes, sir.

Q. Was your plant in Manchester, Virginia?—A. Yes, sir. I didn't say we have a refinery there, did I, Mr. Morrison?

Q. No; but you followed that right up with this sentence—— A. Did I?

Q. ——"Refiners of high grade oils and petroleum products."— A. That is right, sir.

Q. That is true, is it?—A. Yes, sir; that is true. Yes, sir; that has referred to the Standard Oil Company.

Q. You put that on there, didn't you?—A. Yes, sir; I did. I was told by the Standard Oil Company, Mr. Powell, to do that.

Q. Oh, the Standard Oil Company told you to get that up?— A. Yes; I was told, being for the Standard Oil Company, I could put on, being petroleum refiners.

Q. Then you consulted with the Standard Oil Company before you got out this letter head?—A. The Southern Oil Company
11502 before, I believe, had the same model of a letter head.

Q. Will you swear they did?—A. I believe they did. I could not swear to it.

Q. We will show you in a moment what their letter head was before.—A. I believe they did. I could not swear to it.

Q. So, then, this letter head here as it appears was approved and a part of it at least suggested by somebody connected with the Standard Oil Company, was it?—A. I believe it was.

Q. Well, was it or wasn't it, now?—A. I could not say positively.

Q. Didn't you say a few minutes ago that——A. Mr. Powell told me "You can call yourself a refiner now, being that you are with the Standard Oil Company; the Southern Oil Company is the Standard Oil Company, and that we are refining our own oil, or are sending it from our own refinery."

Q. That is to say, because the Standard Oil Company had refineries, you could put on the letter heads of the Southern Oil Company that it had refineries?—A. Yes, sir; they were the same thing.

Q. Now, is it or is it not true that the Southern Oil Company was a refiner of high-grade oils and petroleum products?—A. Their money was; yes, sir.

Q. Was the Southern Oil Company a refiner?—A. Their money worked in the refinery.

Q. Whose money?—A. My money I used to get from the trade, sent to the Standard Oil Company refinery, and we get oil for it.

11503 Q. And so you called the Southern Oil Company a refiner?—A. I did.

Q. Then, as I understand you, the Eureka Oil Company was also a refiner, wasn't it?—A. No, sir; I have never made any——

Q. Wasn't it just as much of a refiner as the Southern?—A. Maybe it was; maybe it was.

Q. Well, "maybe." Was it or wasn't it, now?—A. Maybe it was.

Q. Yes, that was a refiner, too?—A. I never made any——

Q. Why didn't you put that on your letter heads?—A. I had no occasion.

Q. What occasion had you for putting it on here?—A. Well, because this was a business we bought. The Southern Oil Company, they had no refinery, but after the Standard Oil Company bought them out, we had—we paid for that, and we had occasion to put "refiners" on there.

Q. Sure, but after you started the Eureka you were in the same condition, weren't you?—A. We did not buy anybody's name.

Q. Did that make them any more a refiner because you bought them of somebody else than as if you had created them?—A. I may have had the same right then, too, to state "I am a refiner."

Q. You operated the Eagle afterward, didn't you?—A. Yes, sir.

Q. Was that a refiner of oils?—A. About the same thing; yes, sir.

Q. About the same thing, just the same way as the——A. As the Southern.

Q. ——as the Eureka was?—A. All the money went to the same party.

11504 Q. You did not buy the Eagle of anybody, did you?—A. The Standard Oil Company—I did not buy the Eagle of anybody; no, sir.

Q. You started that?—A. The oil I got from the Standard Oil Company.

Q. Did you call that a refinery, too?—A. Well, I could have called it so had I wanted to.

Q. Then, as I understand you, any company or any person that bought oil of the Standard Oil Company and sold it to the trade——A. I did not buy my oil of the Standard Oil Company.

Q. Wait a minute—and sold it to the trade was a refiner?—A. No, sir.

Q. Wasn't it?—A. No, sir.

Q. What more did the Southern do?—A. The Southern did not buy the oil.

Q. Where did it get the oil?—A. From the Standard Oil Company—did not buy it.

Q. Did not buy it?—A. No, sir.

Q. It was billed out to them, wasn't it?—A. No, sir.

Q. They just sent it over there to them?—A. Sent the oil over there, and they remitted for the oil to the Standard Oil Company.

Q. For the oil?—A. Yes, sir.

Q. Well, then, suppose a grocer should buy oil of the Standard, and they would send it over there to the grocery, and the grocer should

sell it to the trade, would you call him a refiner?—A. I told you we didn't buy——

Q. Answer my question.—A. No, sir; I would not.

11505 Q. You would not call him a refiner?—A. No, sir.

Q. Didn't the Southern Oil Company have an account with the Standard Oil Company?—A. Oh, I can't tell you that.

Q. Don't you know that they did, and don't you know that every barrel of oil that went out to the Southern from the Standard was charged up to you——A. Kept a memorandum.

Q. ——on the Standard's books?—A. I suppose they kept a memorandum; yes.

Q. Well, it was charged up to you at a certain price, wasn't it?—A. I could not tell you that.

Q. Don't you know that?—A. Never showed it to me. I have never seen it.

Q. Don't you know how they kept their books?—A. No, sir.

Q. You got invoices, didn't you, whenever you received oil from the Standard?—A. Just the number of the car and how many barrels.

Q. And the price?—A. No, sir.

Q. You never got any price from the Standard?—A. No, sir; no, sir.

Q. They told you what to sell it for, didn't they?—A. That was the price they gave it to us.

Q. Did you keep any books for the Southern?—A. I had some fellow there that kept books; yes, sir.

Q. Did he keep a record of the oil that he got from the Standard?—A. I suppose he did.

Q. And what it cost?—A. No, sir; he did not know the cost.

Q. No record kept of that?—A. No, sir.

Q. Was the Southern Oil Company a refinery?—A. Do you

11506 want me to answer the same question?

Q. Was it a corporation is what I meant to ask you?—A. I don't think so; I don't know.

Q. It was a mere name, just the same as the Eureka, wasn't it?—A. I believe it; I don't know.

Q. Look at the letter head which I now show you. The letter head which I have been calling the attention of the witness to is Exhibit 937, which I expect to offer in evidence. Isn't that the letter head of the Southern Oil Company that was in use when you bought it [handing witness another paper]?—A. I don't think so. Their letter head was just like mine, with red letters, when I bought it.

Q. Will you swear that it was in red letters?—A. I believe it was.

Q. You believe it was?—A. To the best of my knowledge.

Q. Will you swear that there was any statement upon any of their letter heads saying that they were refiners of oil?—A. I don't believe—they did not have any "refiners of oil"—they did not have that on their letters.

Q. Then this is their letter head as it was before, with the exception that you think it was in red ink, isn't it?—A. I believe it was; yes, sir.

Mr. MORRISON. Just mark that letter head, and we will cut it off from the letter.

Mr. CRAWFORD. I give notice that I shall object to the offering in evidence of any mutilated portion of a paper.

Mr. MORRISON. We are simply cutting off the letter head part from a letter. The letter is not material.

1507 Mr. CRAWFORD. I shall object to the offer, when made, upon the ground, among others, that it is mutilated and that it is improper to present the mutilated part of a document.

(Mr. Chase cut off the letter head from the remainder of the sheet, and the letter head was marked Petitioner's Exhibit 938.)

Q. Did you write that letter, dictate it?

Mr. CRAWFORD. You have no business to offer in evidence any mutilated document.

Mr. MORRISON. Oh, wait until we offer it.

Mr. CRAWFORD. You have given notice that you will offer it.

(Witness looks at and reads the exhibit handed to him by Mr. Morrison, being Petitioner's Exhibit 937, two sheets.)

A. I don't remember dictating this letter. I may, but I would not swear yes, and I would not swear no.

Q. You don't know about that?—A. It is not signed.

Q. It is signed "Southern Oil Company."—A. I know, but anybody could put a stamp on there. I would not deny it.

Q. You don't know either way about that?—A. I do not. I don't remember it.

Mr. MORRISON. We offer in evidence Petitioner's Exhibit 937.

Q. You did try to get Cooper Bros. to act as your agents, as I understand you?—A. Yes, sir; I did, I believe, myself. I was at Cooper Bros. myself.

Mr. CRAWFORD. This exhibit is objected to on the ground that the execution of the paper has not been proved, and that

1508 it is immaterial and irrelevant.

Mr. MORRISON. Do you want us to bring Mr. Cooper here to swear that he received that letter? If you insist on that objection, that is what we will do.

Mr. CRAWFORD. I want to take that into consideration. Mr. Blaustein does not recollect that he dictated the letter, and it is an unsigned letter.

Mr. MORRISON. If you do not notify us to the contrary, we may consider then that it may go in, after you consider it.

Mr. CRAWFORD. If I don't notify you to the contrary, my objection stands.

Mr. MORRISON. Then we will regard it as standing.

Mr. CRAWFORD. Very well.

Mr. MORRISON. I call the attention of the witness to the letter head of the Southern Oil Company, which is marked Petitioner's Exhibit 938, and I will now offer that in evidence. You made some objection, Mr. Crawford, while we were identifying it, because it was part of a document. The entire letter head is there, and we have the rest of the letter here which that was cut from, if you have any question about its being the entire letter head.

Q. Do you remember receiving a postal card from Cooper Brothers?—A. I do not. I may.

Q. I notice this statement here: "We regret very much that this has occurred, as you are independent oil dealers like ourselves, and we do not like to interfere with your business if we can help
11509 it." What did you mean by that sentence?—A. If I wrote the letter, I simply meant that we are independent like him. It is plain. You can understand that, too.

Q. You regarded yourself as independent?—A. Yes.

Q. Then did you regard Cooper Brothers as independent?—A. I believe he told me he is independent.

Q. You did not understand that he was connected with the Standard?—A. He used to buy some oil which the Standard Oil Company sold to him.

Q. You did not understand that Cooper Brothers were connected with the Standard in any way, did you?—A. No, sir; I did not.

Q. You understood, then, that they were the same kind of a company as you were, the Southern?—A. I understood them to be independent. So was the Standard Oil Company independent, according to my view.

Q. And so was the Southern, according to your view?—A. Yes, sir.

Q. What companies did you consider were not independent?—A. I do not consider any company not independent.

Q. You thought they were all independent?—A. All independent, those companies who were rich and had plenty of money and did not depend on the banks, did not run short with their supply of oil and gasoline, I call them independent.

Q. That is, you meant by that that they were independently rich?—A. No, sir; independent oil people.

Q. That is, that they were not dependent upon anybody, that they had money enough to run their own business?—A. They are independent oil people, and that was the meaning when I have stated that they are independent, that the Standard Oil Company
11510 since I have known them never ran short of oil or gasoline, never ran short of horses, never borrowed any money to the best of my knowledge, which other people do run out of money and oil and gasoline and horses and everything else.

Q. When you spoke then of an independent company during any of the time that you represented these companies I have been asking you about, you meant that kind of a company, one that did not have to borrow money, and that had plenty of means to carry on its business, did you?—A. I meant an independent oil company.

Q. Well, by independent oil company you meant a company that was independent in its business, that is, it had means to carry on its business without borrowing?—A. Independent of asking anybody any favors, any odds, not governed by next-door man's prices. The Standard Oil Company are the people who are making the prices for other people. Therefore, I call them independent. They generally followed their prices.

Q. Oh, yes. Did you explain that to the people that you were talking to?—A. A good many of them.

Q. That that is what you meant by independent?—A. Yes; I tell them that the Standard Oil Company are the only independent oil people, I believe, in the country, according to my own knowledge and my view of the matter.

Q. And when you were telling them that the Southern or the Eureka were independent companies, did you explain what you meant by it?—A. Anybody who asked me to be explained, I did.

Q. If they asked you what you meant by "independent" you told them?—A. Yes, sir.

11511 Q. Suppose they did not ask you?—A. Then I did not tell them.

Q. Then you didn't say anything about it?—A. No, sir.

Q. You had something to do with a company called the Eagle, hadn't you?—A. Yes, sir.

Q. Where did you get that name—the way you did the Eureka—or did you see some eagle flying over, or what did call that name to your attention?—A. Do you want me to tell you where I got the name from, or where I started the company? What do you want me to tell you?

Q. First tell me where you got that name from.—A. When I worked for the Nicolai Brothers—Charles Nicolai, years ago—he used to have a brother that conducted a business, the Eagle Oil Company, and he died, and that name remained an orphan, and I thought "I will take this name; I like that name;" and if I would have started any other name, you would have asked me "Where did you get that name? Why didn't you get the Eagle," wouldn't you, Mr. Morrison?

Q. Now that explains the whole thing, doesn't it?—A. It is a true answer, and I believe that explains.

Q. Where did this Eagle Oil Company operate?

Mr. CRAWFORD. Which one?

Q. The first one, the one whose name——A. Years ago, in Baltimore.

Q. How long ago was the Eagle operating in Baltimore, that is, the first Eagle?—A. That was about—they had been in business there for some time, I don't remember exactly how many years.

11512 Q. How many years before you took that name was it that the other Eagle Company went out of business in Baltimore?—A. Oh about five or six or seven years.

Q. Was Nicolai running that?—A. James Nicolai was running it, Nicolai's brother.

Q. So then you adopted the name of this company that had been in existence there some five or six years before?—A. Yes, sir.

Q. It had no other connection with that first Eagle company, had it?—A. No, sir.

Q. Did you name this new company yourself?—A. Yes.

Q. Were you in the oil business when the first Eagle company was in Baltimore?—A. I was with his brother, Charles Nicolai.

Q. Of whom did this first Eagle buy its oil?—A. I could not tell you that.

Q. Did not buy of the Standard, did they?—A. I don't know. He was a refiner, I believe. Used to refine his own oil.

Q. Oh, yes; the Eagle Oil Company was a refinery?—A. I don't remember that. I know there was a company by the name of the Eagle Oil Company there.

Q. You think they had a refinery there?—A. I don't remember that. I could not say.

Q. This company operated in the city of Baltimore exclusively, didn't it?—A. Yes, sir.

Q. When was it started?—A. Which company do you mean—the company I started with?

Q. Yes; the Eagle.—A. The latter part of 1900, December.

11513 I believe I went out on the street in 1901.

Q. At the time you started this company, were you running any of these other companies?—A. No, sir; gave everything up. The Standard Oil Company took it away from me.

Q. Did the Standard take over the Southern?—A. Yes, sir; I turned everything over to the Standard Oil Company, to Mr. Powell.

Q. Didn't the Dixie take over the Southern?—A. I have nothing to do with the Dixie. I turned my business over to Mr. Powell.

Q. C. W. Bender had the Dixie, hadn't he?—A. I believe so. I am not much posted in the Dixie business.

Q. And you don't know whether the Southern finally went to the Dixie or not?—A. I could not tell you, Mr. Morrison.

Q. While you were operating the Eureka and the Southern Oil Company?—A. I was not operating——

Q. Wait a moment. When you were operating those two companies you had frequent occasions to write to the main office, hadn't you?—A. I was not operating the Eureka with the Southern Oil Company together.

Q. Not with it, but at the same time, weren't you?—A. No, sir.

Q. Didn't you have charge——A. The Eagle, I meant to say.

Q. No; I am not talking about the Eagle now.—A. I have said when we bought out the Southern. I have changed everything to the Southern. I done away with the Eureka.

11514 Q. While you were running the Southern were you not running the Eureka?—A. No, sir.

Q. You testified this forenoon that you were running the Eureka at Durham at the same time that you were running the Southern at Richmond?—A. Yes.

Q. Was that so?—A. Yes; but after I bought out the Southern, I have changed the name to the Southern.

Q. No; you changed it from the Argand, didn't you, to the Southern?—A. No, sir; I have changed the name from the Eureka to the Southern, after I bought out Warner Moore.

Q. After you bought out the Southern, then you operated the Eureka under the name of the Southern?—A. Yes, sir.

Q. At Durham?—A. Yes, sir.

Q. And at Norfolk?—A. No, sir.

Q. What name was the Eureka operating under at Norfolk?—A. It was not there.

Q. It had gone out before you bought the Southern?—A. Yes, sir.

Q. Do you know anything about the Home Safety Company at Norfolk?—A. No, sir; I don't know a thing about it.

Q. You know there was such a company there, don't you?—A. I don't believe while I was there—the Home Safety was not there.

Q. Did the Eureka Oil Company have an office at Baltimore?—A. Yes, sir; at our station in South Baltimore. The Standard Oil Company built it up for me.

Q. Built up a station there?—A. Yes, sir.

Q. And an office?—A. Yes, sir. And a stable; put up tanks.

11515 Q. Are you talking about the Eagle now, or the Eureka?—A. The Eagle.

Q. I am talking about the Eureka. Did the Eureka have an office?—A. No, sir; the Standard Oil Company was their office.

Q. Did they have a post-office box at any time in Baltimore?—A. No, sir; I don't remember of any.

Q. Did you ever direct letters to the Eagle Oil Company at Baltimore, to a certain post-office box (I mean the Eureka)—to a certain post-office box in Baltimore?—A. I can remember that——

Q. What?—A. I don't remember that. I don't remember if I had a post-office box.

Q. Do you remember that you did not have one?—A. No, sir; I did not. I do not remember whether I did or not. I may have had and I may not. I know I had in Richmond and in Norfolk a post-office box.

Q. No; but I am talking about Baltimore.—A. I don't remember that.

Q. Do you ever remember writing a letter to the Eureka and directing it to Baltimore?—A. No, sir; I don't remember that.

Q. But you will not say that you didn't?—A. No, sir; I could not. I may have.

Q. You mean to say you have no recollection about it?—A. No recollection about it.

Q. Where did your agents write to you from Durham while the Eureka was running there, and from Norfolk, when you would be away from those places?—A. They never wrote to me. I used to be there as frequently—I opened an account in the bank. All they had to do was to deposit the money every day.

11516 Q. That is not the question. Did they ever write you while you were away from there?—A. I don't remember whether they did or not. They used to write to Richmond, I know, after I operated at Richmond.

Q. That is when you were running the Southern?—A. The Southern.

Q. How long did you say the Eagle operated in Baltimore?—A. From January, 1901, to some time in 1905.

Q. What became of that?—A. The Standard Oil Company has taken and put their same wagons and the same man, except the Standard Oil Company.

Q. You ran it up until the time that the Standard Oil Company openly and publicly took it over and put their name on the wagons, didn't you?—A. No; we ran that some time with the Eagle Oil Company's name.

Q. What is that?—A. We have been running on the street until 1905. I was told in the beginning, I think, of 1905 that they need the station for themselves, the plant, and they are going to change it to the Standard Oil Company. I was told—I don't remember what time it was.

Q. It was changed over to the Standard Oil Company?—A. Yes, sir.

Q. Was not that in 1906, the early part of 1906, instead of 1905?—A. No, sir; I don't remember that, Mr. Morrison.

Q. How is that?—A. I don't remember exactly the date or the month when it was.

Q. Do you remember whether it was about the time or some time after the Bureau of Corporations commenced to investigate——A. I don't know anything about——

11517 Q. The Standard Oil Company?—A. I didn't know anything about the bureau of information or investigation until recently, when you started to bring me to New York. I was never approached by anyone of them and did not know it.

Q. What kind of a business did the Eagle do?—A. Wholesale, to stores.

Q. They did not sell any to retail dealers?—A. No, sir.

Mr. CRAWFORD. What do you mean?

Q. I mean to the retail trade.—A. Yes, sir; the retail trade. We sold to stores, wholesale.

Q. Sold to stores?—A. In 5-gallon lots.

Mr. CRAWFORD. You mean you did not sell to consumers.

Q. You did not sell to consumers?—A. No, sir; did not sell to consumers.

Q. Were there any other independent companies in Baltimore besides the Eagle?—A. I don't know what you may call independent. There were other companies, the Red "C"——

Q. The Eagle was independent, wasn't it?—A. I considered it; yes, sir.

Q. And you so stated, didn't you?—A. Yes, sir; according to my belief, my opinion. Of course, I don't know whether I am right or wrong. You may not think so, but I do.

Q. Did you explain to these people that you told that the Eagle was independent what you meant by the word "independent?"—A. Yes, sir; a good many of them; yes, sir.

Q. How did you come to tell them? Did they ask you?—A. Well,
11518 they used to ask me, since they know that we are buying from the Standard Oil Company, and they thought the Standard Oil Company not independent; they thought they were a trust. I used to explain them that the Red "C" Company is just as much a trust as the Standard Oil Company; it is only a difference who has got the most money which is the biggest trust; one is a big trust and the other is a small trust, but it is not because they would not like to have as much money. They are trying hard for it.

Q. That you explained to your customers, did you?—A. Yes, sir.

Q. Now, when you told your customers that the Eagle was independent, if they did not ask you what you meant by the word "independent" you did not tell them, did you?—A. Well, everybody knew we was the Standard Oil Company—almost everybody. Fehsenfeld advertised me pretty heavy before we started in business there.

Q. When your customers asked you whether you were connected with the Standard, what did you tell them?—A. I asked what does he know about it. If he says "I have heard all about you," I said "What did you hear?" "That you are nothing but the Standard Oil Company." I said, "Then you know it. There is no use for me to waste any time to tell you I am not. You know all about it."

Q. Did you tell him you were connected with the Standard?—A. No; he told me so himself.

Q. No; I am asking you, did you tell him you were connected with the Standard?—A. After he told me I was, I tell him, "Yes; you know it."

Q. You said, "Yes, you know it?"—A. Yes, sir.

Q. Why didn't you say just right out, "Yes, I am con-
11519 nected with the Standard; the Standard owns this business?"—A. There is no use for me to go up to a man and tell him my name if he knows my name for the last five years. He would think I am crazy.

Q. Yes; but if a man asks you your name, would you say to him, "Why, you know it, and that is all right?"—A. No, sir; if a man asks me my name, I will tell him my name; but if a man tells me "You are Blaustein," I will tell him, "Well, you know it. My name is Blaustein."

Q. Well, they did ask you pretty often, didn't they, whether or not the Standard Oil Company owned your business?—A. I can't remember how often, Mr. Morrison.

Q. It came up almost daily, didn't it?—A. I could not say that; no, sir.

Q. The other companies in Baltimore, like the Red "C" and the Crew-Levick, were constantly asserting that you were connected with the Standard, weren't they?—A. Yes, sir.

Q. They were telling the trade that?—A. Everybody.

Q. And the trade kept asking you about it?—A. No, sir; they know it. I could not tell them.

Q. No; just answer. The trade kept asking you about it, didn't they?—A. No, sir. Some of them did and some of them didn't.

Q. What was the reason that you took the name Eagle there? Why didn't you take the name of the Standard Oil Company?—A. I have explained this in my direct examination; on account of the Standard Oil Company have lost my business which I used to have before I went traveling for the Standard Oil Company, and my family objected for me to traveling and I asked Mr. Powell——

11520 Q. I am not asking you anything about that at all.—A. What did you ask me?

Q. I am asking you why you did not take the name Standard Oil Company rather than Eagle?—A. Yes, sir; I will explain you why. The trade which I used to have when I was with the Standard Oil Company in Baltimore went to the Crew-Levick and the Red "C" by giving them credit. The Standard Oil Company could not afford to allow——

Q. I have not asked you that.

Mr. CRAWFORD. Wait a minute. That is part of the explanation.

Q. It is no part of an answer to any question I have asked you.

Mr. CRAWFORD. Certainly it is. You asked him why he did not take the name of the Standard Oil Company, and this is what he said on his direct examination. Go ahead and finish it.

Q. Go ahead, if Mr. Crawford wants you to.

Mr. CRAWFORD. That is a direct answer to your question.

A. The Standard Oil Company could not afford to give credit to one class of trade and not give it to all. Therefore, I suggested to Mr. Powell to let me go in business as the Eagle Oil Company, although I did not say exactly the Eagle at once. I told him as another company, just to hold this trade in line, so that the Standard Oil Company will not be compelled to credit. I will credit them, the same like the Crew-Levick and the Red "C."

Q. I thought you said everybody knew you were connected with the Standard?—A. That was before I started, Mr. Morrison.

Q. Didn't they know it as soon as you started?—A. Yes,

11521 sir; I believe they did, but it was only a question of different management.

Q. Well, then, didn't all the other dealers ask credit of the Standard?—A. I don't think they did. I don't know that.

Q. Now the idea was that if you took the name Eagle, and did not take the name Standard, that your trade would not know that they were buying of the Standard, and you could extend credit to them without their charging it up against the Standard?—A. I have told the trade that I am personally responsible for their credits. The

Standard Oil Company would not credit, but I was personally responsible for it. I paid for them.

Q. You were working on a salary, weren't you?—A. Yes, sir.

Q. Simply a hired man for the Standard Oil Company?—A. Yes, sir.

Q. Did you start out extending credits?—A. Well, those cases which I came across where the Crew-Levick and the Red "C" used to credit, they were all my friends; I could not do any otherwise. I had to do it to get their business.

Q. Well, you did it?—A. I did it.

Q. You started out extending credit, didn't you?—A. Yes, sir.

Q. Did you extend credit to the Standard Oil customers?—A. I believe I did, whoever asked me for it. They knew that I am crediting other people. I had to credit them also.

Q. Yes; you have to give credit to the Standard Oil Company's customers?—A. Yes, sir; some of them.

Q. And whenever you got a customer that had been buying from the Standard Oil Company, you would extend credit to him
11522 just the same as if he had been buying of Crew-Levick & Company?—A. I believe I did; yes, sir. If he asked me for credit and I knew he was responsible for the amount, I let him have it.

Q. And yet the whole trade knew that you and the Standard Oil Company were the same thing?—A. No difference, only under different management.

Q. But they all knew that the Standard owned it all, didn't they?—A. I guess they did.

Q. Did your plan work out pretty well?—A. I don't know what you mean by my plan, Mr. Morrison.

Q. Your plan to extend credit to those customers and not have them demand credit of the Standard Oil Company?—A. I have got some business; yes, sir.

Q. It worked out pretty well, did it?—A. Why, I don't know what you call well. I did some business there and gave credit, and that is all I know about it.

Q. You got back, I think you said, a good part of your old trade——A. Yes, sir.

Q. That you had years before?—A. Yes, sir.

Q. Now, how long a time had elapsed between the time that you started out with the Eureka and the time that you got back and started out with the Eagle?—A. About four years.

Q. Four years?—A. About; three and a half or so.

Q. Well, that line of customers that you had then when you started with the Eureka were not all in business, were they, when you came back?—A. A good many of them were.

11523 Q. And some of them were not?—A. And those that were not, they all knew me, as I had been in the oil business in Baltimore long before the Red "C" and the Crew-Levick.

Q. Just answer the question. Some of them were and some of them were not?—A. A good many of them were.

Q. And your customers that you had before you started the Eureka had all gone over to the Red "C" and the Crew-Levick, had they?—A. I didn't say all.

Q. Well, the greater number of them?—A. Yes, sir.

Q. Did they have more of your old customers than the Standard had?—A. By extending those credits; yes, sir.

Q. Well, then, they had a majority of your old customers when you got back there, the Crew-Levick and the Red "C?"—A. I believe they did.

Q. Does the Standard Oil Company extend credit in Baltimore now to dealers?—A. I don't think so. I think they hold the drivers personally responsible for their credits now.

Q. The drivers sell for cash, don't they?—A. Yes, sir. Of course there are some people, jobbers, all who have good rating, I believe the Standard Oil Company extend them some credit. That was not the case before, I don't think, sir.

Q. Wherever they have a credit customer that account is handled at the main office, isn't it? The driver has not anything to do with it?—A. Why, I don't know what you mean, Mr. Morrison—a credit customer. A small grocer man wants 50 gallons of oil or 30
11524 gallons of oil, and the driver wants to credit him, he has got to bring in a signed ticket to show the cashier who settles up with him that he did not get the money for his thirty gallons of oil, and he has got until pay day to collect his money. If he don't, why, we take it off of his salary.

(An adjournment was here taken until Friday, November 6, 1908, at 10.30 o'clock a. m.)

O